

MEETING NOTICE

A meeting of the
Bayside Local Planning Panel
will be held in the Committee Room, Botany Town Hall
Corner of Edward Street and Botany Road, Botany
on **Tuesday 10 September 2019** at **6:00 pm**

ON-SITE INSPECTIONS

On-site inspection/s will precede the meeting.

AGENDA

1 ACKNOWLEDGEMENT OF COUNTRY

Bayside Council respects the traditional custodians of the land, elders past, present and emerging, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

2 APOLOGIES

3 DISCLOSURES OF INTEREST

4 MINUTES OF PREVIOUS MEETINGS

4.1 Minutes of the Bayside Local Planning Panel Meeting - 15 August 2019.....2

4.2 Minutes of the Bayside Local Planning Panel Meeting - 27 August 2019.....8

5 REPORTS – PLANNING PROPOSALS

Nil

6 REPORTS – DEVELOPMENT APPLICATIONS

6.1 DA-2018/293 - 65A Barton Street, Kogarah 17

6.2 DA-2019/143 - 24 Albert Street, Botany 63

6.3 DA-2018/378 - 13A-17 Swinbourne Street, Botany. 114

6.4 S82-2019/6 - 3-5 Queen Street, Botany 219

Members of the public, who have requested to speak at the meeting, will be invited to address the Panel by the Chairperson.

The meeting will be video recorded and live streamed to the community via Council's Facebook page.

Meredith Wallace
General Manager

Bayside Local Planning Panel

10/09/2019

Item No	4.1
Subject	Minutes of the Bayside Local Planning Panel Meeting - 15 August 2019
Report by	Michael McCabe, Director City Futures
File	SF18/3005

Recommendation

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 15 August 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

Present

Robert Montgomery, Chairperson
Jan Murrell, Independent Expert Member
Stephen Moore, Independent Expert Member
Jesse Hanna, Community Representative

Also Present

Clare Harley, Manager Strategic Planning
Fausto Sut, Manager Governance & Risk
Michael McCabe, Director City Futures
Josh Ford, Coordinator Strategic Planning
John McNally, Urban Planner
Howard Taylor, Urban Planner
Helena Miller, Director, MG Planning
Michael File, Consultant Planner, File Planning
Anna Johnston, Consultant Planner, File Planning
Tracey Hau, Senior Urban Designer, SJB Architects
Lauren Thomas, Governance Officer
Wolfgang Gill, IT Support Officer

The Chairperson opened the meeting in the Botany Town Hall Committee Room at 6:12 pm.

1 Acknowledgement of Traditional Owners

The Chairperson affirmed that Bayside Council respects the traditional custodians of the land, elders past and present and future leaders, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

2 Apologies

There were no apologies received.

3 Disclosures of Interest

There were no disclosures of interest.

4 Minutes of Previous Meetings

Nil

5 Reports – Planning Proposals

5.1 Draft Planning Proposal - 2 and 4 Guess Avenue, Wolli Creek

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Michael File, Director – File Planning, for the officer's recommendation and responded to the Panel's questions.
- Anna Johnston, File Planning, for the officer's recommendation and responded to the Panel's questions.

Note: Due to Council's interest in the site (i.e. future acquisition), File Planning was engaged to prepare an independent assessment of the options for the site and to prepare the draft Planning Proposal.

Panel Commentary

It is recognised that this Planning Proposal was initiated following an earlier resolution of the Council relating to acquisition commitments for open space. Indeed, it is valid for a Council to review its future commitments based on contemporary practice in provision of open space, population change, ability to acquire public land and demand for local, district and regional open spaces.

The Panel acknowledges the correspondence from the NSW Department of Planning Industry and Environment dated 16 July 2019 in that department's capacity as the owner of Lot 102 and Council's reply dated 22 July 2019.

The Panel supports retention of the RE1 zone over part of the site. However, the Panel is concerned about the following aspects of the proposal.

- 1 Whether there is adequate justification for the deletion of some 3,700m² of future local open space, in an area which has experienced significant population growth.
- 2 Whether the local community has an expectation that the entire site would be developed as a park in the future.

- 3 Whether the amenity of the future open space will be compromised by development on Lot 101 up to 12 storeys; and
- 4 Whether the proposed 3:1 FSR and maximum building height of 42 metres are appropriate controls for Lot 101 when zoned B4.

In arriving at a recommendation, the Panel considered a number of aspects relating to the four matters listed above. These considerations are summarised as follows:

1 Justification for Reduction in Open Space

Prima facie it would seem counter-intuitive to reduce the provision of open space areas in this location, which is characterised by multi-storey apartment buildings. However, SGS Economics and Planning carried out a detailed review of open space demand based on contemporary practice. This review concluded that a local park of 4,000m² in this location is adequate to meet demand for existing and future population. Open spaces larger than 4,000m² would typically provide district type facilities such as playing fields. SGS notes that district facilities are available within the area in good proximity to the site. The SGS analysis highlighted, that beyond the site, it will be important to consider access to major district and regional reserves where access is constrained due to the absence of river crossings and barriers to crossing the Princes Highway as a pedestrian.

2 Community Expectation

Given that the entire area of lots 101 and 102 is currently zoned RE1 Public Recreation, it is likely that the local community would have an expectation that the whole site would become a public park in the future.

Should this planning proposal proceed, there will be opportunity for the community to be heard through the public consultation process required by Part 3 of the *Environmental Planning and Assessment Act, 1979* and the conditions of any future Gateway Determination.

3 Amenity of Proposed Open Space

As presented, this planning proposal would facilitate 6 storey and 12 storey residential towers, as shown in the indicative built form massing diagram within the Urban Design Report prepared by SJB Architects. The location of such large towers immediately adjoining the eastern edge of the proposed 4,000m² park is likely to have significant impacts on the amenity of the park.

The Panel considers that the amenity of the future open space would be greatly improved with height and density controls for Lot 101 being less than proposed. It is also recommended that proposed 423m² of open space to be retained on Lot 101 (shown in Figure 1 of the Officer's report) should be mirror-imaged to the south, so that a larger open space frontage to Guess Avenue is provided. See figure 1 below:

Figure 1: Bayside Local Planning Panel Recommendation.



4 Density Controls for Lot 101

The Panel considers that the density control settings for Lot 101 are crucial to ensure that the amenity of the reduced area local park is protected. It is noted that the planning proposal adopts the FSR and height controls which are significantly higher than those which apply to land adjoining to the east and south.

The Panel considers that there is insufficient justification for the proposal to adopt these higher density controls. The location of tower buildings adjacent to the reduced area of open space is undesirable and has the potential for adverse impact on the amenity of the future local park.

Recommendation to Council

That the Bayside Local Planning Panel recommends that Council proceed with the draft Planning Proposal for 2 and 4 Guess Avenue, Wolli Creek, as prepared by FPD Pty Ltd and outlined in this report subject to the following matters being further investigated and resolved by Council prior to submission to the Department of Planning Industry and Environment for a Gateway Determination:

- 1 Amend the zoning map as recommended by the Panel in Figure 1 of this report;
- 2 Carry out further investigations (as highlighted in the SGS Report) in relation to:
 - a. ways to improve pedestrian access to nearby regional open space, in particular Cahill Park on the eastern side of the Princes Highway,

including enhanced pedestrian links and the feasibility of a pedestrian bridge over the Highway.

- b. Better pedestrian connections to other existing public open space that may be enhanced.
- 3 Investigate FSR and building height controls which will achieve a lower density and height than proposed for the future built form on the part of the site to be zoned B4. This investigation should include consideration of surrounding density controls, minimising the impact on the amenity of the future local park, activating any proposed buildings with the future park, and creating a more appropriate relationship between future buildings and open space.

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reasons for Panel Recommendation

- The Panel supports retention of the RE1 zone over part of the site.
- The Panel is concerned that the height and density controls proposed for the B4 zone are too high and will create unacceptable impacts on the future local park.
- As this Planning Proposal has the effect of reducing the area of future local open space in this locality, it is essential that the controls on adjoining land will facilitate exceptional amenity for the future local park. It is also important to ensure that linkages to other open space areas are enhanced.

5.2 Planning Proposal - Rockdale Town Centre: Interchange Precinct (471-511 Princes Highway; 2-14 Tramway Arcade; and 6 & 14 Geeves Avenue, Rockdale)

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Ms Anna Anglekis, interested resident, spoke against the officer's recommendation.
- Ms Kate Bartlett, Director - Mecone, spoke for the officer's recommendation and responded to the Panel's questions.

Recommendation to Council

That the Bayside Local Planning Panel recommends to Council that it and the Proponent finalise and update the Planning Proposal Report, the Draft DCP amendments, and relevant supporting documents as outlined above and prepare a heritage assessment of buildings at 471-477 Princes Highway and 6-14 Geeves Avenue, Rockdale prior to referral of the draft Planning Proposal to the Department of Planning, Industry and Environment for a Gateway Determination.

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jan Murrell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Moore	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jesse Hanna	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reasons for Panel Recommendation

- The Panel acknowledges that the site is within a key strategic location for Rockdale and that it is desirable for development controls to be brought into line with those applying to other key sites within the area.
- The public benefit of formalising and enhancing the pedestrian link from Rockdale Station to the Princes Highway is an important aspect of the proposal.
- The Panel agrees that a heritage assessment should be carried out to further inform the proposal prior to forwarding for a Gateway Determination.

6 Reports – Development Applications

Nil.

The Chairperson closed the meeting at 6:49 pm.

Certified as true and correct.

Robert Montgomery
Chairperson

Bayside Local Planning Panel

10/09/2019

Item No	4.2
Subject	Minutes of the Bayside Local Planning Panel Meeting - 27 August 2019
Report by	Michael McCabe, Director City Futures
File	SF18/3005

Recommendation

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 27 August 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

Present

Robert Montgomery, Chairperson
Anthony Reed, Independent Expert Member
Helen Deegan, Independent Expert Member
Thomass Wong, Community Representative

Also Present

Luis Melim, Manager Development Services
Fausto Sut, Manager Governance & Risk
Ben Latta, Coordinator Development Assessment
Fiona Prodromou, Senior Development Assessment Planner
Adam Iskander, Development Assessment Planner
Lauren Thomas, Governance Officer
Taif George, IT Support Officer

The Chairperson opened the meeting in the Botany Town Hall Committee Room at 6:00 pm.

1 Acknowledgement of Traditional Owners

The Chairperson affirmed that Bayside Council respects the traditional custodians of the land, elders past and present and future leaders, on which this meeting takes place, and acknowledges the Gadigal and Bidjigal Clans of the Eora Nation.

2 Apologies

There were no apologies received.

3 Disclosures of Interest

There were no disclosures of interest.

4 Minutes of Previous Meetings

4.1 Minutes of the Bayside Local Planning Panel Meeting - 13 August 2019

Decision

That the Bayside Local Planning Panel notes that the Minutes of the Bayside Local Planning Panel meeting held on 13 August 2019 have been confirmed as a true record of proceedings by the Chairperson of that meeting.

5 Reports – Planning Proposals

Nil

6 Reports – Development Applications

6.1 DA-2017/54/C - 27-31 Bryant Street, Rockdale

An on-site inspection took place at the property earlier in the day.

The following person spoke:

- Ms Lu Liao, architect, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

- A. That the proposed modification application be SUPPORTED given that it:
- i. is substantially the same development as the development for which consent was originally granted and before that consent was modified;
 - ii. has been notified; and
 - iii. has been assessed having regard to the relevant matters in s4.15 of the Environmental Planning and Assessment Act 1979.
- B. That modification application DA-2017/54/C seeking to modify development consent DA-2017/54 for modifications including the deletion of basement level 4 and amendments to basement, fire stairs, common open space, deep soil, service shaft and storage at 27-31 Bryant Street Rockdale be APPROVED and the proposal be modified by amending the description of the development and

conditions 2, 9, 12, 15, 78, 80 and 87 as recommended in the Planning Assessment Report and subject to the following additional condition 33A:

33A. *Prior to the issue of any Construction Certificate, an Arborist Report shall be submitted to and approved by the Director of City Futures of Bayside Council, confirming that the extended basement excavation adjoining the Bryant Street frontage of the site, will not adversely impact upon the stability, root system or health of the two Brushbox Street trees within the nature strip in front of 29 and 31 Bryant Street.*

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helen Deegan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Anthony Reed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thomass Wong	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reasons for Panel Determination

- The Panel agrees with the officer's assessment of the application, acknowledging the need to reduce the depth of excavation within the vicinity of the Sydney Water easement.
- The Panel accepts that the provision of parking spaces is compliant with RMS requirements in this location and notes that the proposed car stacker includes horizontal as well as vertical movement and is a practical solution in the circumstances.

6.2 DA-2018/282 - 20 Dunmore Street North and 23 Monometh Street, Bexley

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Mr Asram Kumar, affected neighbour, spoke against the officer's recommendation.
- Nick Savateev, Architect, spoke for the officer's recommendation and responded to the Panel's questions.
- Dan Brindle, Town Planner, spoke for the officer's recommendation and responded to the Panel's questions.
- Nicholas Maksymow, Managing Director/Proprietor, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approves a variation to the rear 25% area prescribed by cl 40(4)(c) of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
2. That development application DA-2018/282 for demolition of existing dwelling at 23 Monomeeth Street and construction of a two (2) storey extension to Fairmont Aged Care Facility containing 10 wards providing additional 12 beds and minor internal refurbishment works at 20 Dunmore Street North and 23 Monomeeth Street Bexley be APPROVED pursuant to s4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report and the following amendments to the conditions:

Condition 9: Replace the words with "The number of residents is limited to a maximum of 46".

Condition 10(A): After the words "fixed opaque glazing" add "to the lower pane".

Condition 11(a): Delete the reference to basement carpark (including entry and exits).

Condition 11(f) is to be deleted.

Condition 81(1) – change "24" to "23".

3. That the submitters be notified of the Bayside Local Planning Panel's decision.

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helen Deegan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Anthony Reed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thomass Wong	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reasons for Panel Determination

- The Panel agrees with the officer's recommendation.
- The proposed changes to conditions are to correct errors and anomalies.

- The Panel agrees with the variations in the landscaping, number of storeys at rear and car parking as these are considered reasonable in the circumstances.

6.3 DA-2019/71 - 26 Mascot Drive, Eastlakes

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Ms Michelle Chou, affected neighbour, spoke for the officer's recommendation of refusal.
- Ms Despina Kottas, affected neighbour, spoke for the officer's recommendation of refusal.
- Ms Homaira Syeda, affected neighbour, spoke for the officer's recommendation of refusal.
- Dimitrios Hatzitoulousis, owner, spoke against the officer's recommendation of refusal and responded to the Panel's questions.

Determination

- A. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority REFUSE development application DA-2019/71 for demolition of the existing dwelling and construction of a four (4) storey boarding house with 25 double rooms and a manger room, basement parking and associated earthworks and landscaping at 26 Mascot Drive Eastlakes; pursuant to s4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:
1. Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information relating to Clause 4.6 'Exceptions to development standards' relating to floor space has not been provided to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development
 2. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, does not comply with the State Environmental Planning Policy (Affordable Rental Housing) 2009 with respect to:
Clause 29 (1) – Floor space ratio
Clause 29 (2) (c) – Solar access
Clause 30A – Character of local area
 3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the Objectives of Clause 4.3 of Botany Bay Local Environmental Plan 2013 relating to Height of Building as the design has not taken into consideration the adjoining neighbouring properties and has not considered the adjoining R2 low density zone;

4. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.4 of Botany Bay Local Environmental Plan 2013 relating to floor space ratio as the gross floor area is in excess of the maximum permissible and the proposal is not compatible with the bulk and scale of the existing and desired character of the locality; does not maintain an appropriate visual relationship between new and existing characters of the area; negatively contributes to streetscape; does not minimise environmental impacts to adjoining properties and does not provide an appropriate correlation between the size of a site and the extent of development;
5. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy the Objectives of Clause 6.3 of Botany Bay Local Environmental Plan 2013 relating to stormwater management;
6. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of Part 3C.2 of Botany Bay Development Control Plan 2013 'Access and mobility', including Objectives O3 and Table 1;
7. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of Part 4C.2.2 of Botany Bay Development Control Plan 2013 'Streetscape presentation', including Objectives O1, O2, and O4;
8. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of Part 4C.2.3 of Botany Bay Development Control Plan 2013 'Height', including Objectives O1 and O2;
9. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of Part 4C.2.6 of Botany Bay development Control Plan 213 'Setbacks', including Objectives O1 and O3;
10. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of Part 4C.3.2 of Botany Bay Development Control Plan 2013 'Fences', including Objectives O2;
11. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Botany Bay Development Control Plan 2013 'Boarding houses' including Objectives O1, O2 and O4;
12. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the desired future character of Part 8 of Botany Bay Development Control Plan 2013 'Eastlakes character precinct';

13. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is likely to result in the following adverse environmental impacts:
 - (a) Built Environment – The proposed development results in adverse impacts on the streetscape and neighbourhood character and adjoining properties.
14. The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment;
15. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of bulk, scale, size, height and density and would adversely impact upon the amenity of the locality;
16. The proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, is not considered suitable for the site, in terms of design, size and scale and is likely to adversely impact on the streetscape and the adjoining neighbours;
17. Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the proposal results in unacceptable over-looking and overshadowing impacts on adjoining properties.
18. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and in consideration of the impacts and submissions made, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

B That the submitters be notified of Council's decision.

Name	For	Against
Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helen Deegan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Anthony Reed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thomass Wong	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reasons for Panel Determination

- The Panel agrees with the officer's assessment of the proposal, in particular, in that it does not satisfy a number of statutory requirements and merit considerations.

- The Panel agrees that the proposal is an over-development of the site and will have an unacceptable impact on neighbouring properties in terms of amenity, solar access and privacy.
- The Panel notes that the proposed car stacker is unacceptable for a boarding house development.

6.4 DA-2018/218/A - 376 Rocky Point Road, Sans Souci

An on-site inspection took place at the property earlier in the day.

The following people spoke:

- Chris Tsioulos, Director - CMT Architects, spoke for the officer's recommendation and responded to the Panel's questions.
- Michael Gheorghiu, town planner, spoke for the officer's recommendation and responded to the Panel's questions.

Determination

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority, pursuant to S4.55(1A) of the Environmental Planning and Assessment Act 1979 be satisfied that the proposed modification:
 - i. is of minimal environmental impact;
 - ii. is substantially the same development as the development for which consent was originally granted and before that consent was modified;
 - iii. has been notified; and
 - iv. has been assessed having regard to the relevant matters in s4.15 of the Environmental Planning and Assessment Act 1979.
2. That modification application DA-2019/218/A seeking to modify development consent DA-2019/218 including amendments to internal configuration of various units, extension of some balconies and minor reduction in overall roof height at 378 Rocky Point Road Sans Souci be APPROVED. The proposal is modified in the following manner:
 - i. By amending condition 2 relating to the implementation of plans;
 - ii. By amending condition 10 to reflect the change in building height; and
 - iii. By adding condition 10A to ensure privacy is maintained between the subject site and neighbouring properties.
 - iv. By adding condition 10B to ensure that privacy is maintained between neighbouring units within the development.

Name	For	Against
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Robert Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helen Deegan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Anthony Reed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thomass Wong	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reasons for Panel Determination

- The Panel agrees with the officer's assessment of the application.
- The proposed modifications are minor in nature and do not create any adverse impacts on neighbouring properties.

The Chairperson closed the meeting at 7:15 pm.

Certified as true and correct.

Robert Montgomery
Chairperson

Bayside Local Planning Panel

10/09/2019

Item No	6.1
Application Type	Development Application
Application No	DA-2018/293
Lodgement Date	31/10/2018
Property	65A Barton Street, Kogarah
Ward	Ward 5
Owner	Bayside Council
Applicant	Golden Goal P/L
Proposal	Installation of thirty-six (36) x 8 metre high lighting towers at Scarborough Park Tennis Courts
No. of Submissions	18
Cost of Development	\$60,000
Report by	Michael McCabe, Director City Futures

Officer Recommendation

- 1 That the Bayside Planning Panel, exercising its functions as the consent authority, **REFUSE** Development Application DA-2018/293 for the installation of thirty-six (36) x 8 metre high lighting towers at the Scarborough Park Tennis Courts, pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment act 1979* for the following reasons:
 1. Insufficient information has been provided to enable proper assessment of the proposal with respect to Clause 6.8 Biodiversity protection under Rockdale Local Environmental Plan 2011 as a Flora and Fauna Impact Assessment has not been provided the Statement of Environmental Effects is inadequate with respect to the provisions of this clause.

The additional information requested has not been provided, and Council are unable to consider the adverse impact of the proposed development on the following – as required by clause 6.8(3):

 - a) native ecological communities,
 - b) the habitat of any threatened species, populations or ecological community,
 - c) regionally significant species of fauna and flora or habitat,
 - d) habitat elements providing connectivity.
 2. Insufficient information has been provided to enable proper assessment of the proposal with respect to Clause 2.3 Zone objectives and Land Use Table. The development application does not provide sufficient information to confirm whether the proposal can satisfy the third objective for the RE1 Public Recreation Zone in which the development is proposed to be carried out. That third objective being:
 - *To protect and enhance the natural environment for recreational purposes.*
-

3. The proposed development is unsatisfactory, pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as it does not comply with the following objectives and controls of *Rockdale Development Control Plan 2011*:
 - a) Part 4.1.8 Biodiversity – Without the provision of a Flora and Fauna Impact Assessment and amended Statement of Environmental Effects, Council cannot be satisfied the proposal complies with the objectives and controls for biodiversity land prescribed under Part 4.1.8 of the *Rockdale Development Control Plan 2011*.
 4. Without the provision of a Flora and Fauna Impact Assessment and amended Statement of Environmental Effects, pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the impacts of the proposed development on the natural environment cannot be confirmed.
 5. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, it cannot be confirmed the proposed development is suitable for the site.
 6. There is a public interest in ensuring development appropriately protects and enhances the natural environment, particularly native flora and fauna, habitats and ecological processes. There is also a public interest in ensuring the provisions of Council's planning controls are upheld. Having regard to the reasons for refusal outlined above, pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of the development is not in the public interest.
- 2 That the submitters be notified of the decision of the Panel.
-

Location Plan



Attachments

- 1 Assessment Report [↓](#)
- 2 Site Plan [↓](#)
- 3 Elevations
- 4 Sports-Lighting Specifications - 65A Barton Street Kogarah [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2018/293
Date of Receipt:	31 October 2018
Property:	Scarborough Park Tennis Courts, 65A Barton Street, KOGARAH NSW 2217 Lot 1 in Deposited Plan 1177511
Owner:	Bayside City Council
Applicant:	Golden Goal Pty Ltd
Proposal:	Installation of thirty-six (36) x 8 metre high lighting towers at the Scarborough Park Tennis Courts
Recommendation:	Refusal
No. of Submissions:	Eighteen (18) unique submissions by way of objection have been received following notification of the development application (DA) in accordance with the provisions of the <i>Rockdale Development Control Plan 2011</i> .
Author:	Ben Tesoriero - Creative Planning Solutions Pty Limited
Date of Report:	19 June 2019

Key Issues

The key issues with the proposal are as follows:

- **Council owned land** – The application has been assessed by an independent town planner as the proposal is located on Council owned land. Further, because the land owner is the Council, the DA must be determined by the Bayside Local Planning Panel (the Panel) in accordance with the Minister's direction dated 23 February 2018.
- **Contentious development** – The application attracted eighteen (18) unique submissions by way of objection as a result of the DA notification. This forms another reason why the DA must be determined by the Panel, given the submissions received are more than the threshold of 10 outlined within the aforementioned Minister's direction.

- **Light spill** – Installation of outdoor lighting must take into consideration the potential light spill impacts on sensitive receivers, such as residential accommodation.

The tennis courts are isolated from residential areas through a physical separation of at least 80m, and are also obscured by existing vegetation in the Hawthorne Street Nature Reserve, and buildings such as the Syd Frost Memorial Hall.

This isolation and obscuring is considered to satisfactory mitigate the obtrusive effects of the proposed light poles.

Consent conditions have however been recommended to ensure the tennis court lighting complies with the Australian Standards for Control of the obtrusive effects of outdoor lighting (AS 4282-1997).

- **Traffic and parking** – The proposed development does not seek to increase the number of tennis courts provided on the site, nor does the proposal seek to change the use of the tennis courts. The proposal also does not necessarily seek to modify the hours of operation permitted at the tennis courts over that covered within the lease between Council and Golden Goal Pty Ltd (GG).

As such, it is not anticipated that the proposal will result in a significant impact to the existing traffic and parking arrangements.

Good parking opportunities already exist at the site, with perpendicular parking spaces aligning the western side of Hawthorne Street.

Should matters relating to the use of the tennis courts become an issue, this would be best dealt with by Council through adjustments to the licensing agreements entered into between the Council and any organisation using the sporting facility.

Acoustic impacts – The proposal seeks not to increase the numbers of people utilising the tennis courts at any one time, however the illumination of the tennis courts will enable their use later into the evening.

As outlined above, good separation distances between the tennis courts and sensitive residential receivers is included.

It is also noted that noise associated from use of the courts and ancillary activity is already controlled through the conditions contained within the tennis court lease between Council and GG. Section 4.2 provides that the lessee must not permit any act at the premises which causes or may cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of adjoining or neighbouring lands or buildings.

A condition of consent has however been imposed to ensure curfew switches are installed on the light poles. The curfew switches will require illumination of the courts to cease at 9:45pm to ensure use of the tennis courts does not encroach into the more sensitive night-time period – i.e. 10pm to 7am as recognised by the NSW EPA.

Recommendation

A. That the Bayside Planning Panel, exercising its functions as the consent authority, **REFUSE** Development Application DA-2018/293 for the installation of thirty-six (36) x 8 metre high lighting towers at the Scarborough Park Tennis Courts, pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* for the following reasons:

1. Insufficient information has been provided to enable proper assessment of the proposal with respect to Clause 6.8 Biodiversity protection under Rockdale Local Environmental Plan 2011 as a Flora and Fauna Impact Assessment has not been provided the Statement of Environmental Effects is inadequate with respect to the provisions of this clause.

The additional information requested has not been provided, and Council are unable to consider the adverse impact of the proposed development on the following – as required by clause 6.8(3):

- a) native ecological communities,
- b) the habitat of any threatened species, populations or ecological community,
- c) regionally significant species of fauna and flora or habitat,
- d) habitat elements providing connectivity.

2. Insufficient information has been provided to enable proper assessment of the proposal with respect to Clause 2.3 Zone objectives and Land Use Table. The development application does not provide sufficient information to confirm whether the proposal can satisfy the third objective for the RE1 Public Recreation Zone in which the development is proposed to be carried out. That third objective being:

- To protect and enhance the natural environment for recreational purposes.

3. The proposed development is unsatisfactory, pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as it does not comply with the following objectives and controls of *Rockdale Development Control Plan 2011*:

- a) Part 4.1.8 Biodiversity – Without the provision of a Flora and Fauna Impact Assessment and amended Statement of Environmental Effects, Council cannot be satisfied the proposal complies with the objectives and controls for biodiversity land prescribed under Part 4.1.8 of the *Rockdale Development Control Plan 2011*.

4. Without the provision of a Flora and Fauna Impact Assessment and amended Statement of Environmental Effects, pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the impacts of the proposed development on the natural environment cannot be confirmed.

5. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, it cannot be confirmed the proposed development is suitable for the site.

6. There is a public interest in ensuring development appropriately protects and enhances the natural environment, particularly native flora and fauna, habitats and ecological processes. There is also a public interest in ensuring the provisions of

Council's planning controls are upheld. Having regard to the reasons for refusal outlined above, pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of the development is not in the public interest.

B. That the submitters be notified of the decision of the Panel.

Background

History

- On 1 October 2013 Golden Goal Pty Ltd (GG) became the lessee of the tennis courts at Scarborough Park from the then Rockdale City Council. The lease agreement between GG and Council expires on 30 September 2023, and one of the conditions of the lease is for GG to install floodlighting to service the tennis courts.
- Since commencing the lease in 2013, no development consents have been granted in relation to the tennis courts. The most recent consent specifically relating to the tennis courts is the addition of a small office to the courts under DA-1993/383.
- The subject development application (DA-2018/293) was lodged with Council on 31 October 2018 seeking consent for the installation of thirty-six (36) x 8 metre high lighting towers at the Scarborough Park Tennis Courts. Further details of the proposal are outlined later in this report.
- The DA was placed on public notification in accordance with the provisions of the *Rockdale Development Control Plan 2011* (DCP) from 6 November 2018 through to 22 November 2018. In response to the notification of the DA, eighteen (18) unique submissions by way of objection were received. The key objections raised in the submissions can be summarised as follows:
 - Insufficient detail provided by the applicant relation to the proposal, including the nominated use of the courts, light pole fitting/construction, light pole specifications, and operational management;
 - The proposed hours of operation are excessive and should be reduced;
 - Noise impacts resulting from the extended use of the courts into the night time period;
 - Light spill impacts resulting from the thirty-six (36) light poles proposed;
 - Traffic and parking impacts associated with the extended use of the courts;
 - Environmental impacts from the court illumination on flora and fauna in the surround land;
 - Safety concerns and resultant anti-social behaviour from the extended court use;

A comprehensive response to the key objections raised in the submissions is covered later in this assessment report.

- On 14 November 2018 the subject DA was referred to CPS for independent planning assessment given the proposal is to occur on Council owned land.
- On 15 March 2019 an additional information request was issued to the applicant requesting a response to the following two (2) questions:

- *Please provide details/specifications on the light poles and the luminaries that are attached to the light poles.*
 - *Please confirm that the use of the courts is limited to tennis (i.e. not futsal, 5-a-side soccer etc.) as this would require a new level of assessment due to intensification of use.*
- On 28 March 2019 a response was provided by the applicant to the above questions. On the matter of details/specifications of the light poles and luminaries, the applicant provided Council with a product catalogue for the proposed lighting, the details of which are covered later in this assessment report.

On the matter of whether the tennis courts would be used for activities other than tennis, the applicant indicated that the conditions of GG's lease prescribe the courts are to be used for tennis only.

A review of the Deed of Lease between Council and GG has been undertaken. The provisions of Condition 4.2 and the Reference Schedule confirm the permitted use of the courts is for tennis only.

It is also noted that nothing in the DA proposes a change of use to the tennis courts.

- On 10 April 2019 the referral response from Council's Environmental Strategy officer was received. The officer undertook an assessment in relation to biodiversity protection, and raised the following issues requiring additional information from the applicant:
 - *This area is habitat to a number of native fauna species including threatened species.*
 - *The application does not adequately address impacts of the lighting and change of use and impact this will have on the fauna found in this location*
 - *Council requests a flora and fauna assessment undertaken by a qualified ecologist to be submitted that consider the impact particularly in relation to light pollution, noise, and increase number of people at night*
 - *Applicant also needs to address the Coastal SEPP legislation; and*
 - *Applicant also needs to address the Biodiversity Conservation Act 2016 legislation due to the threatened species in the locality*
- On 16 April 2019 Council's Acting Coordinator of Environmental Strategy was queried in relation to their above additional information request, particularly given the applicant had provided further information on 28 March 2019 as to the lighting specification proposed, and also confirmed the courts would continue to be used for tennis only. In response, Council's Acting Coordinator of Environmental Strategy maintained the site is sensitive habitat and will require submission of the additional information requested.
- On 16 April 2019 Council subsequently requested the applicant provide the information outlined by Environmental Strategy. Council officers spoke with the applicant on 23 May 2019 reminding them of the outstanding response to Council's additional information request.
- On 7 June 2019 the author of this assessment report was advised by Council's Coordinator Development Assessment that the additional information requested from the applicant remained outstanding. The author of this report was directed to complete the assessment report so the DA could be presented to the Panel for determination.
- On 18 June 2019 Council officers emailed the applicant advising of Council's intention the DA be put to the Panel for determination.

Proposal

The proposed development seeks consent for the installation of thirty-six (36) x 8m high light poles at six (6) existing tennis courts within Scarborough Park. The tennis courts are located within the southern portion of Scarborough Park in an area identified as Leo Smith Reserve.

Six (6) light poles are proposed for each tennis court in the configuration depicted in **Figure 1** and **Figure 2** below.

The DA lodgement documentation provided no details on the lighting specifications, so this was sought from the applicant as part of an additional information request. In response the applicant provided a product catalogue, a summary of which is bullet pointed below, with images from the product catalogue contained in **Figure 3**.

- Type of Lighting – CourtBlade (XARL) LED Sports Lighting
- Luminaries Mounting Height – 6.7056m
- Mounting – Stainless steel threaded mounting studs.

The Statement of Environmental Effects (SEE) submitted with the DA indicates the proposed hours of operation will be 8:00am to 11:00pm each day of the week.

The SEE confirms that the installation of the light poles does not include any excavation of the land, nor modification to any existing buildings on the site.

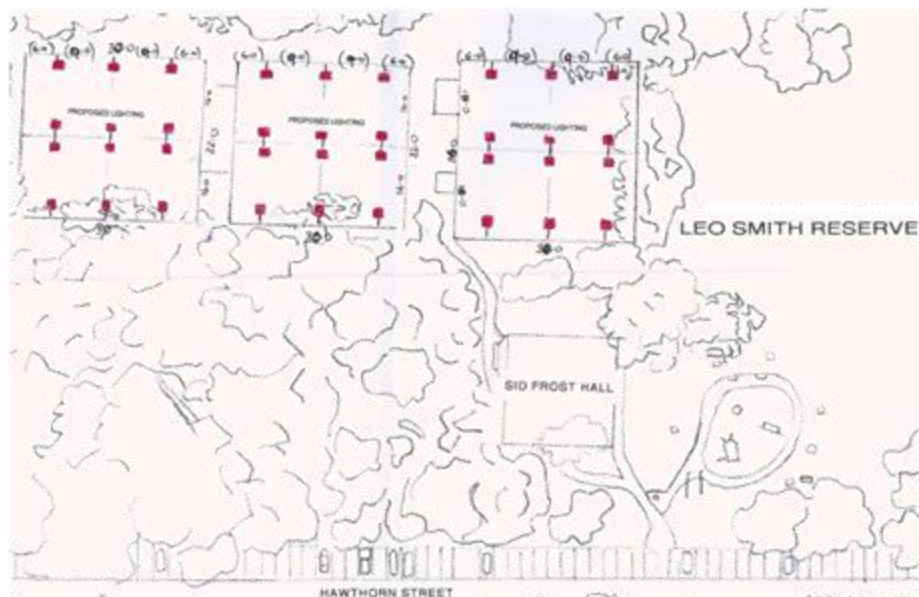


Figure 1 – Extract of applicant's site plan depicting the positioning of the thirty-six (36) x 8m high light poles proposed. Each of the six (6) tennis courts is to contain six (6) light poles.

Source: Applicant's submitted site plan

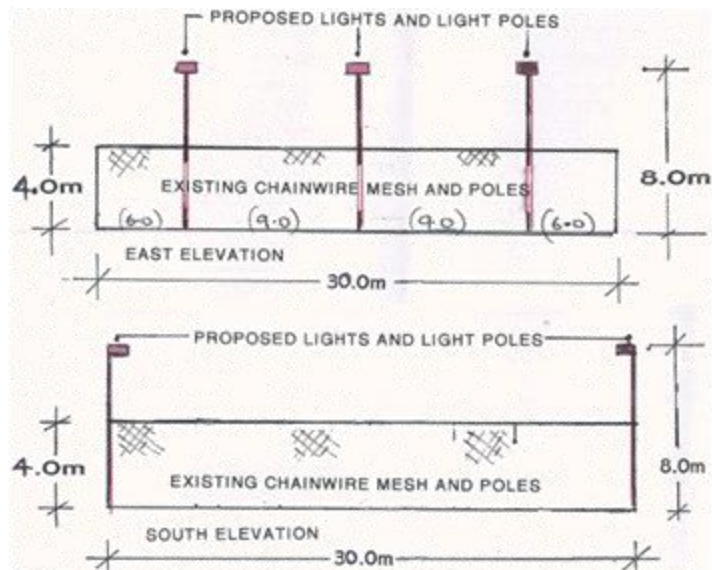


Figure 2 – Extract of the applicant's elevation drawings showing the height of the proposed light poles in relation to the existing chainwire mesh fencing and support poles around the courts.

Source: Applicant's submitted elevation drawings



Figure 3 – Image from the product catalogue supplied by the applicant as an example of the lighting proposed for tennis courts at Scarborough Park.

Source: LSI CourtBlade (XARL) LED Sports Lighting product catalogue.



Figure 4 – Photograph captured from the north-west corner of the tennis courts looking south along the western boundary of the tennis courts.
Source: CPS site inspection April 2019



Figure 5 – Photograph captured from the north-east corner of the tennis courts looking south along the eastern boundary of the tennis courts.
Source: CPS site inspection April 2019



Figure 6 - Photograph captured from the western side of the tennis courts looking east across the courts toward the bushland that comprises part of the 'Hawthorne Street Natural Area'. Beyond this bushland is the Hawthorne Street road reserve, and then on the opposite side of the road are the nearest residential dwellings

Source: CPS site inspection April 2019



Figure 7 – Photograph captured from the eastern verge of Hawthorne Street adjacent to the residential boundary looking west towards the tennis courts. Noted is the streetlights illuminating the Hawthorne Street road reserve, light poles within Scarborough Park, and the location of Sid Frost Memorial Hall blocking views of the courts.

Source: CPS site inspection April 2019



Figure 8 – Photograph captured from the eastern verge of Hawthorne Street adjacent to the residential boundary looking west towards the tennis courts. This photograph is captured south along Hawthorne Street to that of *Figure 6* above. Noted is the dense bushland of the Hawthorne Street Nature Reserve screening views of the tennis courts.

Source: CPS site inspection April 2019

Site location and context

Scarborough Park stretches from Monterey in the north to Ramsgate in the south. The south end of the park where the tennis courts are located is known as Leo Smith Reserve. The site is identified as Lot 1 in Deposited Plan 1177511, and includes street addresses of:

- 75R Barton Street, Monterey;
- 65A Barton Street, Monterey; and
- 1A-1B Hawthorne Street, Monterey.

For the purposes of the subject DA, Council's addressing database refers to the site as 65A Barton Street, Monterey.

Improvements at the southern end of Scarborough Park at Leo Smith Reserve include:

- Syd Front Memorial Hall;
- Scarborough Park Tennis Courts and ancillary buildings;
- Hawthorne Reserve Playground;
- Amenities buildings;
- Park lighting;
- Walking trails; and
- Extensive car parking areas located along the eastern edge of the park adjacent to Hawthorne Street.

Natural areas include the Hawthorne Street Nature Reserve, a substantial portion of which is located between the tennis courts and the adjacent residential areas on the opposite site of Hawthorne Street. According to plaques at the nature reserve, Council identify the reserve as containing:

- Two endangered ecological communities, being the Coastal Sands Swamp Forest and Kurnell Dune Forest.
- The finest stand of Kurnell Dune Forest in Sydney.
- Tonbridge Creek, the second most important fish breeding site in Botany Bay.
- A stranded lagoon.
- Many native plant and animal species, some of which occur nowhere else in the St George District.

The *Bayside Council Plan of Management for Community Land and Public Open Space 2016* (PoM) identifies the current use of Scarborough Park south as including active recreation uses, along with future sports lighting installation.

Note: The preparation of the aforementioned PoM by Bayside Council was subject to community consultation whereby community workshops were held, along with invitations to make comment on the development of the PoM.



Figure 9 – Aerial Image of Scarborough Park south and surrounding land uses.

Source: <https://maps.six.nsw.gov.au/>

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S.4.15(1) - Matters for Consideration - General

S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy No 55 – Remediation of Land

The subject site is zoned RE1 (Public Recreation) under the *Rockdale Local Environmental Plan 2011* (LEP). Prior to the current zoning the subject site was zoned 6(a) Existing Open Space under the *Rockdale Local Environmental Plan 2000*. As such, it is understood that contaminating land uses such as industrial, defence, and agricultural uses have not been permissible on the subject site for at least the last 18 years.

The subject site has no history of any written notices (contamination or clean up) having been issued on the site under the *Contaminated Land Management Act 1997* (source: <https://apps.epa.nsw.gov.au/prclmapp/searchregister.aspx>)

Site and desktop investigations have found no evidence that contaminating land uses are ongoing or have occurred in the past on adjoining land.

There is no evidence to suggest that the subject site is contaminated and therefore further investigation is not warranted. Accordingly, the subject site is considered to be suitable for the proposed development subject to the imposition of recommended consent conditions.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

As part of the assessment of the DA, the proposal was referred to Council's Tree Management Officer for comment. In their referral response dated 7 December 2018, it was advised that the proposal is satisfactory with regards to *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and also Clause 4.1.7 'Tree Preservation' of the Rockdale Development Control Plan 2011.

The referral response has included conditions of consent should the DA be approved, including conditions for tree protection measures during construction.

Rockdale Local Environmental Plan 2011

The relevant provisions of the LEP have been considered against the proposed development and are discussed in the following:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone RE1 Public Recreation	Yes	Yes - see discussion

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.3 Height of buildings	N/A	N/A – see discussion
4.4 Floor space ratio - Residential zones	N/A	N/A
5.10 Heritage conservation	Yes	Yes – see discussion
6.1 Acid Sulfate Soil - Class 3	Yes	Yes – see discussion
6.2 Earthworks	N/A	N/A – see discussion
6.4 Airspace Operation	N/A	N/A – see discussion
6.6 Flood planning	N/A	N/A – see discussion
6.7 Stormwater	N/A	N/A – see discussion
6.8 Biodiversity Protection	No	No – see discussion
6.10 Wetlands	N/A	N/A – see discussion
6.12 Essential Services	Yes	Yes – see discussion

2.3 Zone RE1 Public Recreation

Pursuant to the LEP Land Zoning Map – Sheet LZN_005 (dated 17 March 2017), the subject site is zoned RE1 Public Recreation, refer to **Figure 10**.



Figure 10 – Land Zoning Map extract, illustrating the RE1 zoning of the subject site in the centre of the image

Source: legislation.nsw.gov.au – Rockdale Local Environmental Plan 2011

The objectives of the RE1 zone are:

- *to enable land to be used by the public for open space and recreational activities,*
- *to provide a range of recreational settings and activities and compatible land uses,*
and
- *to protect and enhance the natural environment for recreational purposes.*

The first objective of this zone is to enable land to be used for public open space or recreational purposes. As such, development for the purposes of 'recreation facilities (outdoor)' is a land use permitted with consent under this zone.

The definition for 'recreation facilities (outdoor)' is provided below:

recreation facility (outdoor) means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, ***tennis court***, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

Emphasis added.

The proposed development, being the erection of light poles in association with existing tennis courts, is therefore development permitted with consent.

The proposed lighting will enable the extended use of the tennis courts, giving more people an opportunity to utilise the facility after dark.

Given the separation distances between the tennis courts and residential areas, many of the impacts typically associated with illumination of sporting infrastructure (i.e. light spill and noise) will be isolated from residences.

As discussed earlier in this assessment report, and outlined within the referral response from Council's Environmental Strategy officer, insufficient information has been provided by the applicant to undertake a proper assessment of the proposal's likely impact on the natural environment, and as such, it cannot be confirmed the proposal satisfactorily responds to the third objective of the zone – that is to *protect and enhance the natural environment for recreational purposes*.

Having regard to the above, the proposal's inability to satisfactorily respond to all objectives of the RE1 zone forms one of the recommended reasons for refusal of this DA.

4.3 Height of buildings

Pursuant to the Height of Building Map – Sheet HOB_005 (dated 4 May 2018), the subject site is not identified as being restricted to a maximum height, refer to **Figure 11**.



Figure 11 – Maximum Height of Buildings Map extract, illustrating that the maximum height of building clause (4.3) has not been applied to the subject site.
 Source: legislation.nsw.gov.au – Rockdale Local Environmental Plan 2011

Irrespective, the proposal does not offend the objectives of clause 4.3 as it will not impact on the sky exposure or unduly reduce daylight to any nearby buildings or public domain. The 8m height of the poles mean they are largely indiscernible from Hawthorne Street given they are below the height of surrounding vegetation, and located behind the Syd Frost Memorial Hall.

5.10 Heritage conservation

Pursuant to the Heritage Map – Sheet HER 005 (dated 11 July 2014), the subject site is identified as containing a heritage item, being Item No. I203 'Hawthorne Street Reserve/Leo Smith Reserve' under Schedule 5 of the LEP. Refer to **Figure 14**.

As part of the assessment of the DA, the proposal was referred to Council's Heritage Advisor for comment. In their referral response on 28 November 2018, it was advised that the light poles would have an acceptable level of heritage impact. The reason provided was because the tennis courts are existing, and the lighting will only be an extension of this existing activity.



Figure 12 – Heritage Map extract, illustrating that the subject site contains a Heritage Item No. I203 – 'Hawthorne Street Reserve/Leo Smith Reserve'.
Source: legislation.nsw.gov.au – Rockdale Local Environmental Plan 2011

6.1 – Acid Sulfate Soils – Class 3

Pursuant to the Acid Sulfate Soils Map – sheet ASS_005 (dated 11 July 2014), the subject site is identified as being affected by Class 3 Acid Sulfate Soils (ASS), refer to **Figure 13**.



Figure 13 – Acid Sulfate Soil Map extract, illustrating the subject site as being affected by Class 3 Acid Sulfate Soils
Source: legislation.nsw.gov.au – Rockdale Local Environmental Plan 2011

Clause 6.1 outlines that an acid sulfate soils management plan must be prepared for any land identified as being affected by Class 3 ASS, for any proposed works that:

- Is 1 metre below natural ground surface for land identified as Class 3 ASS, or
- Will likely lower the water table below 1 metre for land identified as Class 3 ASS.

The 8m light poles will be mounted to the courts by stainless steel threaded mounting studs. As such, minimal ground disturbance is anticipated with this activity.

The SEE specifically states in Section 3.4 that the proposed works do not include any excavation of the land.

Having regard to the above, despite being affected by Class 3 ASS, the proposal will therefore satisfy the provisions of clause 6.1, and not necessitate the preparation of an acid sulfate soils management plan.

6.4 – Airspace operations

The proposed development is located within the inner horizontal surface (51m AHD) identified on Sydney Airports Obstacle Limitation Surfaces map as declared by the Department of Infrastructure and Regional Development on 20 March 2015.

However given the low 8m height of the light poles, and the ground level of the site being approximately 5m AHD, the poles will not penetrate the Limitation or Operations Surface, and therefore not necessitate consultation with Sydney Airport.

6.6 – Flooding

Pursuant to the Flood Planning Map – Sheet FLD_005 (dated 11 July 2014), the subject site is not identified as being located within a Flood Planning Area, refer to **Figure 14**.



Figure 14 – Flood Planning Land extract, illustrating that the subject site not identified as being within a Flood Planning Area

Source: legislation.nsw.gov.au – Rockdale Local Environmental Plan 2011

6.7 – Stormwater

Given the nature of the proposed works being limited to the erection of light poles and the illumination of tennis courts, there is not anticipated to be any impact on stormwater as a result of the development.

6.8, 6.9, 6.10 – Biodiversity protection, Riparian Land, and Wetlands

The subject site, adjoining land, and land within the general vicinity of the site is mapped as containing Environmentally Significant Land (ESL), biodiversity land and terrestrial biodiversity. The land is however not mapped as containing ESL wetlands or 'wetlands' – refer to **Figure 15, 16, 17, and 18**. The land would however feature within the buffer areas of these wetlands.

Under clause 6.8(3), before determining a DA for development identified as including 'biodiversity' on the Terrestrial Biodiversity Map, the consent authority must consider any adverse impact of the proposed development on:

- native ecological communities,
- the habitat of any threatened species, populations or ecological community,
- regionally significant species of fauna and flora or habitat,
- habitat elements providing connectivity.

Clause 6.3(4) provides that development consent must not be granted unless the consent authority is satisfied that:

- the development is designed, sited and will be managed to avoid any adverse environmental impact, or
- if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or
- if that impact cannot be minimised—the development will be managed to mitigate that impact.

As covered earlier in this report, as part of the assessment of the DA, the proposal was referred to Council's Environmental Strategy department who have considered the application with regard to clause 6.8 of the LEP, and also section 4.1.8 of the DCP. In their referral response dated 10 April 2019, Environmental Strategy have advised insufficient information has been provided to enable a proper assessment, noting that:

- *This area is habitat to a number of native fauna species including threatened species.*
- *The application does not adequately address impacts of the lighting and change of use and impact this will have on the fauna found in this location*
- *Council requests a flora and fauna assessment undertaken by a qualified ecologist to be submitted that consider the impact particularly in relation to light pollution, noise, and increase number of people at night*
- *Applicant also needs to address the Coastal SEPP legislation and*
- *Applicant also needs to address the Biodiversity Conservation Act 2016 legislation due to the threatened species in the locality.*

As covered earlier in this assessment report, on 16 April 2019 Council's Acting Coordinator of Environmental Strategy was queried in relation to their above additional information request, particularly given the applicant had provided further information on 28 March 2019 as to the lighting specification proposed, and also confirmed the courts would continue to be used for

tennis only. In response, Council's Acting Coordinator of Environmental Strategy maintained the site is sensitive habitat and will require submission of the additional information requested. To date, the additional information requested from the applicant remains outstanding.

Based on the above, this assessment cannot be satisfied the proposal adequately responds to the provisions of clause 6.8(3), and therefore pursuant to clause 6.8(4) the consent authority must not consent to the subject DA.



Figure 15 – Extract Environmentally Sensitive Land Map - Biodiversity
Source: legislation.nsw.gov.au – Rockdale Local Environmental Plan 2011



Figure 16 – Extract of Environmentally Sensitive Lands Map - Wetlands
Source: legislation.nsw.gov.au – Rockdale Local Environmental Plan 2011



Figure 17 – Extract of Environmentally Sensitive Lands Map - Terrestrial Biodiversity
Source: legislation.nsw.gov.au – Rockdale Local Environmental Plan 2011



Figure 18 – Extract of Wetlands Map
Source: legislation.nsw.gov.au – Rockdale Local Environmental Plan 2011

6.12 – Essential services

Given the existing use of the site, essential services such as water, electricity, sewage, and local roads are already available.

Conditions of consent will be imposed requiring that consultation with the relevant utility providers be had prior to commencing any works to ensure that specific requirements for the provision of services are satisfied.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

No relevant proposed instruments are applicable to this proposal.

S.4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following development control plan is relevant to this application:

Rockdale Development Control Plan 2011 (RDCP)

The relevant provisions of the DCP have been considered against the proposed development and are discussed in the following:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes	Yes – see discussion
4.1.2 Heritage Conservation	Yes	Yes – see discussion
4.1.3 Water Management	N/A	N/A – see discussion
4.1.4 Soil Management	N/A	N/A – see discussion
4.1.8 Biodiversity	No	No – see discussion
4.2 Streetscape and Site Context	Yes	Yes – see discussion
4.3.1 Open Space and Landscape Design	Yes	Yes – see discussion
4.6 Parking, Access and Movement	Yes	Yes – see discussion

4.1.1 Views and Vista

Light poles are structures that are entirely consistent with, and expected within the visual landscape for tennis courts, and in particular land that is zoned RE1 Public Recreation under the LEP.

The subject site is positioned within a wider sporting field precinct which also includes the adjacent Phil Austin Baseball Field, Tonbridge Street Reserve, Scarborough Park East, and Scarborough Park west of the pond. All of these fields include light poles for illuminating the playing surfaces, and as such the addition of light poles to the Scarborough Park tennis courts will not be inconsistent with the views and vistas in the surrounding area.

Land within the vicinity of the subject site does not benefit from any water or district views, and as such the erection of the light poles will not interrupt important views or vistas

Given the relatively low 8m height of the light poles, when combined with the separation large distances and obscuring vegetation/buildings, the light poles will be largely indiscernible from adjoining residential areas.

Conditions of consent will be imposed to ensure compliance with the Australian Standards for control of the obtrusive effects of outdoor lighting (AS 4282-1997)

Having regard to the above, the proposal is considered to have an acceptable impact with regard to views and vistas.

4.1.2 Heritage Conservation

As discussed in the assessment against clause 5.10 Heritage Conservation of the LEP, the referral response from Council's Heritage Advisor is supportive of the proposed development, and has indicated the proposal includes an acceptable level of heritage impact given the tennis courts are existing, and the proposal only seeks an extension of this existing activity.

Further, a search of the Aboriginal Heritage Information Management System (AHIMS) database has identified no aboriginal sites or places within 50m of the subject site.

Having regard to the above, the proposal is considered not to unduly impact on environmental heritage.

4.1.3 Water Management

The proposed development relates only to the installation of light poles to existing tennis courts. As such, the works will not impact or require augmentation to the existing stormwater management arrangements on the site.

4.1.4 Soil Management

The SEE submitted with the DA confirms that the proposal includes no excavation on the land, nor any modification to existing buildings on the site. As such, the development will not necessitate the management of soils.

4.1.8 Biodiversity

The subject site is mapped as containing biodiversity land. In their referral response dated 10 April 2019, Council's Environmental Strategy officers have indicated they are not satisfied the proposal has adequately addressed the development's potential impacts on the biodiversity land, and as such have requested additional information from the applicant.

As outlined earlier in response to clause 6.8 'Biodiversity protection' of the LEP, this assessment cannot be satisfied the proposal adequately responds to the provisions of clause 6.8(3), and therefore pursuant to clause 6.8(4) the consent authority must not consent to the subject DA.

4.2 Streetscape

The proposed development is positioned around 60m from the road reserve, and substantially screened by vegetation within the Hawthorne Street Nature Reserve and also the Syd Front Memorial Hall building. As such, the development will be largely indiscernible from the street. When illuminated, the glow of the lights would likely be viewable, however given the lights are associated with an existing sporting facility, and within Scarborough Park which includes many other sporting facilities with light poles, the visual impact will not be discordant in the streetscape.

Light poles are also included along Hawthorne Street to illuminate the street and the associated parking areas. As such, neither the light poles nor the illuminated tennis courts will be incompatible with the local area.

4.3.1 Open Space and Landscape Design

The proposed development does not seek to change the use of the open space or any of the existing landscaping. The works only pertain to the erection of the light poles to the existing tennis courts.

No tree removal is proposed, and the existing landscape arrangements on the site will not be impacted upon by the proposed works.

Accordingly, the proposal has an acceptable impact with regard to the open space and landscape design of the site.

4.6 Parking, Access and Movement

The proposal essentially represents an 'alterations and additions' DA, being the addition of light poles to an existing sporting facility.

The development controls of Part 4.6 of the DCP outline the following parking requirements for 'alterations and additions' to an existing development:

'Additional parking is required to be provided equivalent to the increase in gross floor area, number of seats, number of beds, or whichever specific unit upon which car parking demand is measured.'

In this regard, parking demand is a determinant of the 'number of participants' using the tennis courts, and therefore shall be the specific unit upon which car parking demand should be measured.

The 'number of participants' using the tennis courts is not anticipated to result in an increase over the historical use of the tennis courts. The proposal does not seek to change the use of the courts, and nor does it seek to construct any additional courts on the site.

The proposal only seeks to add illumination to the sports courts to enable their use in the evening period. As such, the proposal can be seen as prolonging the use of the courts, rather than increasing the number of tennis court participants at any one time.

Irrespective of the above, the southern portion of Scarborough Park where the tennis courts are located are well served by parking infrastructure. Almost the entire length of the western side of Hawthorne Street includes perpendicular parking for users of the park, stretching 350m from Emmaline Street in the north to Florence Street in the south. Furthermore, unrestricted parallel parking is provided along the eastern side of Hawthorne Street.

In the circumstance where the proposal is only seeking to extend the use of the existing courts into the evening, and not increasing the number of courts nor changing their use, the large amount of parking available is considered sufficient.

S.4.15(1)(a)(iv) - Provisions of regulations

Regulation 54 of the *Environmental Planning and Assessment Regulation 2000* provides that a consent authority may request the applicant for provide it with such additional information about the proposed development as it considers necessary to its proper consideration of the DA.

The provisions of Regulation 54 also indicate the request must be in writing, and may specify a reasonable period within which the information must be provided to the consent authority.

Regulation 54(6) outlines if the applicant for development consent has failed to provide any of the requested information by the end timeframe provided, then the applicant is taken to have notified the consent authority that the information will not be provided, and the application may be dealt with accordingly.

On 16 April 2019 Council wrote to the applicant by email requesting the submission of a Flora and Fauna Assessment prepared by a qualified ecologist and amended the Statement of Environmental Effects to satisfy matters raised by Council's Environmental Strategy department following receipt of their referral response on 10 April 2019.

For reference, the comments from Environmental Strategy included:

- *This area is habitat to a number of native fauna species including threatened species.*
- *The application does not adequately address impacts of the lighting and change of use and impact this will have on the fauna found in this location*
- *Council requests a flora and fauna assessment undertaken by a qualified ecologist to be submitted that consider the impact particularly in relation to light pollution, noise, and increase number of people at night*
- *The Statement of Environmental Effects is to address the Coastal SEPP legislation and the Biodiversity Conservation Act 2016 legislation due to the threatened species in the locality*

The additional information request advised, that because of the upcoming Easter break, the applicant had 21-days to submit the required information.

On 23 May 2019 Council officers spoke with the applicant reminding them about the outstanding information that had been requested.

On 18 June 2019 Council officers emailed the applicant advising of their intention to finalise the assessment report and have the DA determined by the BPP.

S.4.15(1)(b) - Likely Impacts of Development

The majority of the likely impacts resulting from the proposed development have been covered in the assessment of the proposal against the LEP and DCP. The likely impacts that are not completely covered within the assessment against Council's planning controls, or which require further consideration include:

- Acoustic Impacts; and
- Light Spill Impacts.

Acoustic Impact

Any noise from the use of the courts themselves must be considered in the context of the site. The tennis courts are located approximately 80m west of the residential dwellings located along Hawthorne Street, and about 170m north-east of the residential dwellings along Margate Street.

Between Hawthorne Street and the tennis courts is the road reserve and perpendicular parking spaces for Scarborough Park, beyond is bushland around 60m in width. At the northern end of the courts, is the Syd Front Memorial Hall which is also positioned between the courts and the dwellings on the eastern side of Hawthorne Street.

As such, there is considered to be sufficient separation distance from the tennis courts to dissipate the impacts of noise on the residential receivers.

It is important to note noise associated with the use of the tennis courts up until civil twilight is an existing impact resulting from the site's use.

The proposal to illuminate the tennis courts and enable the continuation of associated activity later into the evening is not anticipated to increase noise, but rather prolong the period in which such noise is generated.

The Environmental Protection Authority (EPA) generally acknowledges ones sensitivity to noise is dependent on the time of day for which the noise is occurring. The least sensitive period is typically the daytime from 7:00am to 6:00pm, more sensitive is the evening from 6:00pm to 10:00pm, and the most sensitive is the night from 10:00pm to 7:00am.

The conditions of Council's lease in terms of operating hours are somewhat conflicting. Section 5.3(b) of the lease prescribes the lessee must not use or permit the use of the premises between the hours of 10:00pm and 6:00am the following day. Similarly, Section 5.3(c) provides the lessee must cause all lighting of the courts to be extinguished between the hours of 10:00pm and 6:00am the following day.

However, Item 10 within the lease's reference schedule indicates the permitted operating hours are from 8:00am to 11:00pm each day except Christmas Day.

The DA seeks consent for use of the lights until 11:00pm each day of the week.

Having regard to the EPA's time of day sensitivities, and allowing sufficient time for people at the courts to leave the premises and associated car park before the commencement of the night time period, this assessment recommends a condition be imposed restricting the illumination of the courts to 9:45pm, should the DA be approved.

Additionally, to properly accord with the EPA's guidelines regarding the night time period (see *Noise Guide for Government* and the *Noise Guide for Industry*) it is considered the illumination of the courts should not commence before 7:00am, irrespective of the lease conditions that may be construed to permit illumination from 6:00am.

Having regard to the above, the following conditions of consent are recommended should the Panel be of a mind to approve the DA:

Light curfew – *The tennis court lights are to commence operation no earlier than 7:00am, and be automatically extinguished by 9:45pm. Should use of the tennis courts conclude earlier, the lights are to be extinguished at the earlier concluding time.*

Automatic light switch – *An automated curfew switch is to be installed, along with manual off switches, for each light pole.*

As outlined by the Panel in their determination of a similar DA for additional light poles at the Memorial Park Playing Fields, the Panel explained that matters relating to the use of playing fields are best dealt with through a licensing agreement entered into between the Council and any user of the sporting fields, rather than through the imposition of consent conditions.

Noise associated from use of the courts and ancillary activity is already controlled through the conditions contained within the tennis court lease between Council and GG. Section 4.2 provides that the lessee must not permit any act at the premises which causes or may cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of adjoining or neighbouring lands or buildings.

Light Spill Impacts

Any light spill from the illumination of the courts must also be considered in the context of the site and surrounding area. As indicated in **Figure 19** below, the tennis courts are located approximately 80m west of the residential dwellings located along Hawthorne Street, and about 170m north-east of the residential dwellings along Margate Street.

This separation distance, along the screening effects of vegetation and buildings within Scarborough Park are considered satisfactory to dissipate the obtrusive effects of the 8m high light poles on the residential areas.

To ensure the lighting at the tennis courts complies with the Australian Standards for Control of the obtrusive effects of outdoor lighting (AS 4282-1997), the following condition is recommended, should the DA be approved:

Compliance with AS 4282-1997

The light poles at the tennis courts are to comply with the Australian Standard AS4282-1997 'Control of Obtrusive Effects of Outdoor Lighting'.

To further minimise the potential for late-evening lighting nuisance, it is recommended that all tennis court lights are extinguished by 9.45pm. The cessation of lighting at 9:45pm will ensure compliance is achieved with the 11:00pm curfew established under AS 4282-1997.

See previous comments under 'Acoustic Impact' for recommended conditions relating to curfew switches on the lights.



Figure 19 – Aerial image showing the separation distance between the tennis courts that are to be illuminated and the nearest residential accommodation. Noted is the significant bushland areas between the courts and dwellings, along with some buildings also. The separation distance and location of vegetation/buildings is considered to satisfactorily diffuse light spill impacts.
Source: <https://maps.six.nsw.gov.au/>

It is also worthwhile putting some perspective into the amount of tennis court illumination that will occur. In winter, civil twilight in Sydney is as early as 5:20pm, whereas in summer it is as late as 8:39pm. If the lights were to be operated in accordance with the consent conditions above, this would correlate to a minimum 1 hour and 6 minutes additional court usage a day in mid-summer and a maximum 4 hours and 25 minutes additional usage a day in mid-winter.

S.4.15(1)(d) - Public submissions

The proposed development was notified from 6 November 2018 to 22 November 2018. In response to the notification of the DA, eighteen (18) unique submissions by way of objection were received. The objections raised in the submissions are indicated below, along with a comment from the consultant planner.

1. Use of the tennis courts

The submissions have raised concern over how the illuminated tennis courts will be used, indicating the current operator that leases the courts (GG) is known to convert tennis courts into multi-purpose sports fields for five-a-side soccer/futsal games – for example the recently approved development at 369E Bexley Road, Bexley (DA 2015/272).

The submissions claim the illumination of the courts is the first step in their conversion to multi-purpose sports fields.

Should such conversations occur, the submissions raise concern over the intensified use of the site, and the associated impacts on residential amenity from increased noise, along with traffic and parking concerns.

Comment – The description of the proposed development indicates the proposal relates to the installation of 8 metre high lighting poles at the Scarborough Park tennis courts.

The site plan and elevation drawings for which the applicant seeks consent depict no court conversion works, only the installation of light poles as proposed.

Pages 5-7 of the SEE submitted with the DA provides further details of the proposal. Under Section 3.1 on page 5, it is stated *'the proposed use of the facility on site remains as existing'*.

On 15 March 2019 the following question was put to the applicant by email in relation to the proposed court use:

- *Please confirm that the use of the courts is limited to tennis (i.e. not futsal, 5-a-side soccer etc.) as this would require a new level of assessment due to intensification of use.*

In the applicant's email response on 28 March 2019, GG indicated the conditions of the tennis court lease from Council prescribe the courts be used for tennis only.

A review of the Deed of Lease for the Scarborough Park Tennis Courts between the then Rockdale City Council and GG has been undertaken. Condition 4.2(a) of the lease provides the permitted use of the premises or any part thereof is for the purpose shown in Item 8 of the Reference Schedule. The Reference Schedule indicates the permitted use in Item 8 as a 'tennis facility'. This confirms the applicant's response on 28 March 2019.

The DA before Council does not propose to change the use of the courts, as and as such, any consent granted to the subject DA would only approve the installation of lighting, and the hours for which that lighting may be operated.

2. Maximum capacity

The submissions have raised concern over the maximum capacity of the tennis courts, and have requested the capacity of the facility be limited to not more than twenty-four (24) persons at any one time. This is based on all 6 courts being used simultaneously for doubles tennis games.

Comment – The tennis courts are an existing approved facility. The Deed of Lease provides no capacity limit on the use of the tennis courts.

To impose a maximum capacity of twenty-four (24) persons does not take into consideration a change-over in court bookings, whereby persons may be awaiting court users to finish, or recently completed court users that have yet to vacate the site. The suggested limit also does not take into consideration court spectators, such as parents/guardians of children playing on the courts, does not take into consideration umpires at the courts, or GG staff that may be present. It is also feasible that the courts may be used for other tennis purposes, such as coaching classes and training etc. which may necessitate larger numbers of court users.

As mentioned, the proposal does not seek to introduce a new land use to the site, with the existing tennis courts having been long established within Scarborough Park.

The land is zoned RE1 Public Recreation under the provisions of the LEP. The first objective of this zone is to enable land to be used for public open space or recreational purposes. As such, development for the purposes of 'recreation facilities (outdoor)' (which includes tennis courts) is a land use permitted with consent under this zone.

The *Bayside Council Plan of Management for Community Land and Public Open Space 2016* identifies lighting improvements to sporting infrastructure as a future use of the southern portion of Scarborough Park.

Additionally, the installation of floodlighting on all tennis courts is listed as part of the lessee's schedule of works within Council's lease of the premises to GG.

Having regard to the above, the development can be seen as consistent with Council's planning provisions, plan of management for public open spaces, and the lease of the premises. As such, the continued use of the premises as tennis courts and their illumination for evening use, is development that is expected on the subject site. Rationalising the number of tennis court users would be inconsistent with existing and desired future use of the facility by Council.

3. Noise impacts

The submissions have raised concern the extended use of the courts into the evening period will result in noise impacts on nearby sensitive receivers as a result of vehicles moving in and out of the area, the use of car parking areas, and tennis court activity.

The submissions also raise concern the applicant has not included an independent acoustic assessment of the proposal as part of the DA.

Comment – Noise impacts associated with the development have been assessed earlier in this report in response to the likely impacts of the development under s.4.15(1)(b) of the Act.

As covered earlier, noise associated with the use of the tennis courts up until civil twilight is an existing impact resulting from the site's use.

Some inconsistencies between the conditions prescribed in Council's lease, the description of the proposal within the submitted SEE, and the noise sensitive times of day established by the EPA were identified.

These inconsistencies have been addressed through consent conditions restricting use of the lights beyond 9:45pm and before 7:00am.

It is again noted that noise from use of the courts and ancillary activity is already controlled through the conditions contained within the tennis court lease between Council and GG. Section 4.2 provides that the lessee must not permit any act at the premises which causes or may cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of adjoining or neighbouring lands or buildings.

In recent determinations for sports field lighting where no change of use, and no increase in the number of sports fields/courts is proposed, the Panel have consistently advised matters relating to the use of playing fields are best dealt with through a licensing agreement entered to between the Council and any user of the sporting fields, rather than through the imposition of consent conditions.

Having regard to the site conditions, experience on like projects, the nature of the proposed development, the requirement for the applicant to prepare an acoustic impact assessment is considered unnecessary. This is particularly the case when management conditions are already in place within the lease agreement.

4. Light spill

Submissions have objected to the proposal on the basis of light spill, claiming the lights will impact the amenity of nearby residential areas.

Claims have also been made that the proposal contains insufficient detail on the specification of lights to be installed.

Comment – Light spill impacts associated with the development have been assessed earlier in this report in response to the likely impacts of the development under s.4.15(1)(b) of the Act.

The tennis courts are isolated from residential areas through physical separation of at least 80m, and are also obscured by existing vegetation in the Hawthorne Street Nature Reserve, and buildings such as the Syd Frost Memorial Hall.

This isolation and obscuring is considered satisfactory to mitigate the obtrusive effects of the 8m high light poles on the residential areas.

A consent condition has been recommended to ensure the tennis court lighting complies with the Australian Standards for Control of the obtrusive effects of outdoor lighting (AS 4282-1997).

To further minimise the potential for lighting nuisance, a condition has also been recommended that all tennis court lights be extinguished by 9.45pm. The cessation of lighting at 9:45pm will ensure compliance is achieved with the 11:00pm curfew established under AS 4282-1997.

Regarding the specifications for the light poles, this was a matter raised with the applicant as part of an additional information request on 15 March 2019. In the applicant's response received by Council on 28 March 2019 a product catalogue for the proposed lighting was provided. Reference is made to the discussion under the 'Proposal' section of this report for further details.

5. Traffic and parking

The submissions have objected to the proposal on the basis of parking and traffic related impacts, citing insufficient parking availability, constrained vehicle movements, heavily congested streets during existing daytime periods, and pedestrian safety concerns.

Comment – Traffic and parking impacts are assessed earlier in this report in response to the proposal's ability to comply with Section 4.6 of the DCP. As assessed, the proposal does not offend the DCP parking controls for alterations and additions to existing developments.

Pursuant to Section 4.15(3A)(a) of the Act, if a DCP contains provisions that relate to the development that is the subject of a DA, and the development complies with those provisions, then the consent authority is not to impose more onerous standards.

The assessment did however find that the southern portion of Scarborough Park where the tennis courts are located are well served by parking infrastructure. Almost the entire length of the western side of Hawthorne Street includes perpendicular parking for users of the park, stretching 350m from Emmaline Street in the north to Florence Street in the south. Furthermore, unrestricted parallel parking is provided along the eastern side of Hawthorne Street.

In the circumstance where the proposal is only seeking to extend the use of the existing courts into the evening, and not increase the number of courts nor change their use, the large amount of parking available is considered sufficient.

Objections relating to daytime traffic and parking issues within the area are not considered relevant to the proposed development which is seeking illumination of the tennis courts for evening use.

Existing perpendicular parking spaces along the western side of Hawthorne Street are taken to have been installed in accordance with the relevant Australian Standards at the time they were constructed.

6. Fencing

Submissions have raised concern over the state of repair of the existing tennis court fencing.

Comment – The lessee's schedule of works contained within the lease between Council and GG prescribes the rewiring and reinforcement of the existing fencing at the premises.

Whether these works have been undertaken is not a matter for this DA. Enquiries or complaints should be directed separately to Council.

7. Light pole

Submissions raise concern with there being insufficient information pertaining to the light pole design, fitting, construction, height, and location.

Comment – Generally, construction detail is a matter for the construction certificate phase of the development. However an additional information request was made with the applicant for further details/specifications on the proposed lighting.

As outlined earlier, the applicant's response included a product catalogue of the lighting proposed, which indicates the poles are to be fixed to the courts by stainless steel threaded mounting studs.

There is no prescribed height limit for the subject site under clause 4.3 of the LEP. Nonetheless, at 8m the proposed light poles are considered to be of modest height when compared to other sports lighting that is closer to 18-20m high. With 8m light poles, the height of surrounding vegetation and the Syd Frost Memorial Hall will largely screen the structures from the streetscape and residential areas beyond.

The site plan and elevation drawings indicate six (6) light poles will be erected per tennis court, with three (3) poles along each side of the tennis court's long axis. The spacing of the light poles is shown in the submitted drawings.

8. Hours of operation

Submissions have raised concern with the proposed operating hours for the lights, and suggested these be reduced to 8:00am and 8:00pm Monday to Saturday and 9:00am to 6:00pm on Sundays.

Comment – As outlined earlier, in winter, civil twilight in Sydney is as early as 5:20pm, whereas in summer it is as late as 8:39pm. If the lights were to be operated in accordance with the recommended hours of the objector, this would correlate to a no additional court usage in mid-summer and a maximum 2 hours and 40 minutes additional usage in mid-winter (Monday to Saturday) and a maximum of 40 minutes on Sundays.

Such limited usage of the lights would question the viability of their installation.

With the imposition of the conditions recommended, the usage of the lights will fall within the conditions of the lease between Council and GG, and also achieve compliance with the curfew period of AS 4282-1997. Furthermore, by requiring the lights be extinguished by 9:45pm, the use of the tennis courts can fall outside of the most noise sensitive night time period established by the EPA.

9. Waste management

Submissions have raised concerns about operational waste associated with the extended use of the tennis courts.

Comment – Condition 6.3 of the lease between Council and GG provides requirements for the waste management, cleanliness and repairs at the premises. These conditions will continue to apply in the event approval is provided for the illumination of the tennis courts.

10. Environmental concerns

Submissions have raised concern over the proposal's potential impact on nearby sensitive environmental lands, and the effects of the tennis court illumination on local flora and fauna.

Comment – As detailed within this assessment, the DA was referred to Council's Environmental Strategy department who has raised concern that the proposal inadequately addresses potential impacts on the site's biodiversity land.

As such, an additional information request was issued to the applicant seeking the submission of a flora and fauna impact assessment prepared by a suitably qualified professional, as well as an amended SEE.

To date, this information has not been submitted, therefore not allowing Council to carry out a proper assessment with regard to the biodiversity controls under clause 6.8 of the LEP, or section 4.1.8 of the DCP.

In accordance with clause 6.8(4) of the LEP, the consent authority must therefore not consent to the application.

This forms one of the recommended reasons for refusal of the DA.

11. Anti-social behaviour within the park

Submissions have raised concerns about anti-social behaviour occurring in the park and the appropriateness of the extended use of the courts.

Comment – Increased passive surveillance resulting from the extended use of the courts into the evening period may help serve as a deterrent for anti-social behaviour within the park.

Any anti-social behaviour associated with users of the tennis courts is already managed by Condition 4.2 of the lease which provides that the lessee must not permit any act at the premises which causes or may cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of adjoining or neighbouring lands or buildings.

S.4.15(1)(e) - Public interest

The proposed development will support the use of an existing facility at Scarborough Park by enabling tennis to be played into the evening period.

Increasing opportunities for participation in organised outdoor activities is in the public interest. The improved use of the subject site supports the economic use of the land, and helps reduce the need to use additional land for recreational activities to cater for the demand of the community.

The proposed works are also consistent with the future works outlined within the *Bayside Council Plan of Management for Community Land and Public Open Space 2016*.

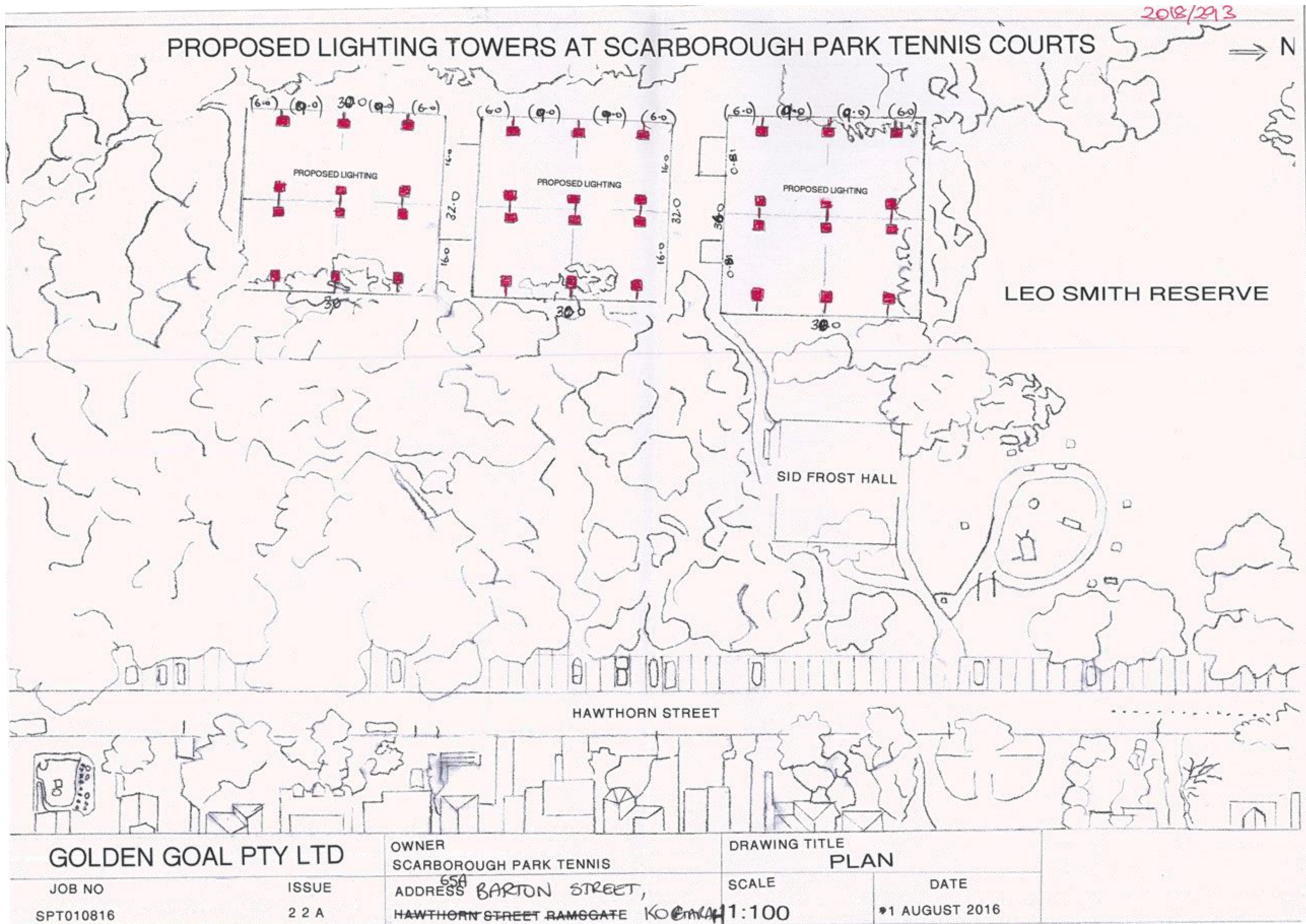
However there is a public interest in ensuring development appropriately protects and enhances the natural environment, particularly native flora and fauna, habitats and ecological processes. Given the applicant has not been able to furnish Council with sufficient information to carry out a proper assessment of the biodiversity land, approval of the DA in its current form is not in the public interest.

There is also a public interest in ensuring planning controls are upheld, and in the circumstance the proposal is unable to achieve compliance with clause 6.8 of the LEP, it must also be held the DA is not in the public interest.

Report prepared by:

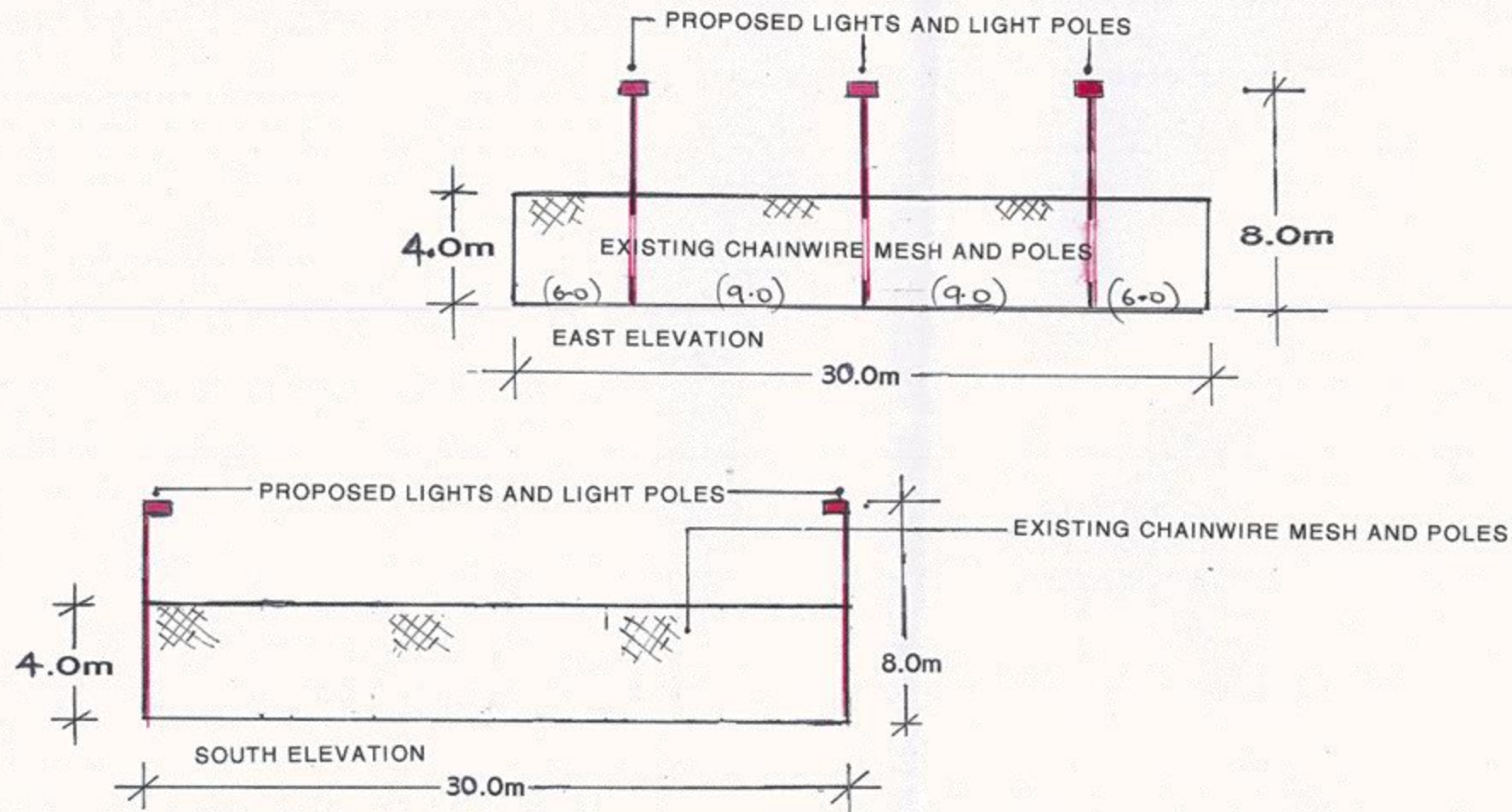


Ben Tesoriero
Consultant Planner
Creative Planning Solutions Pty Limited
19 June 2019



2018/293

PROPOSED LIGHTING TOWERS AT SCARBOROUGH PARK TENNIS COURTS



GOLDEN GOAL PTY LTD

Owner:
SCARBOROUGH PARK TENNIS

Drawing Title:
ELEVATIONS

AMENDMENTS:

Job No:
SPT010816

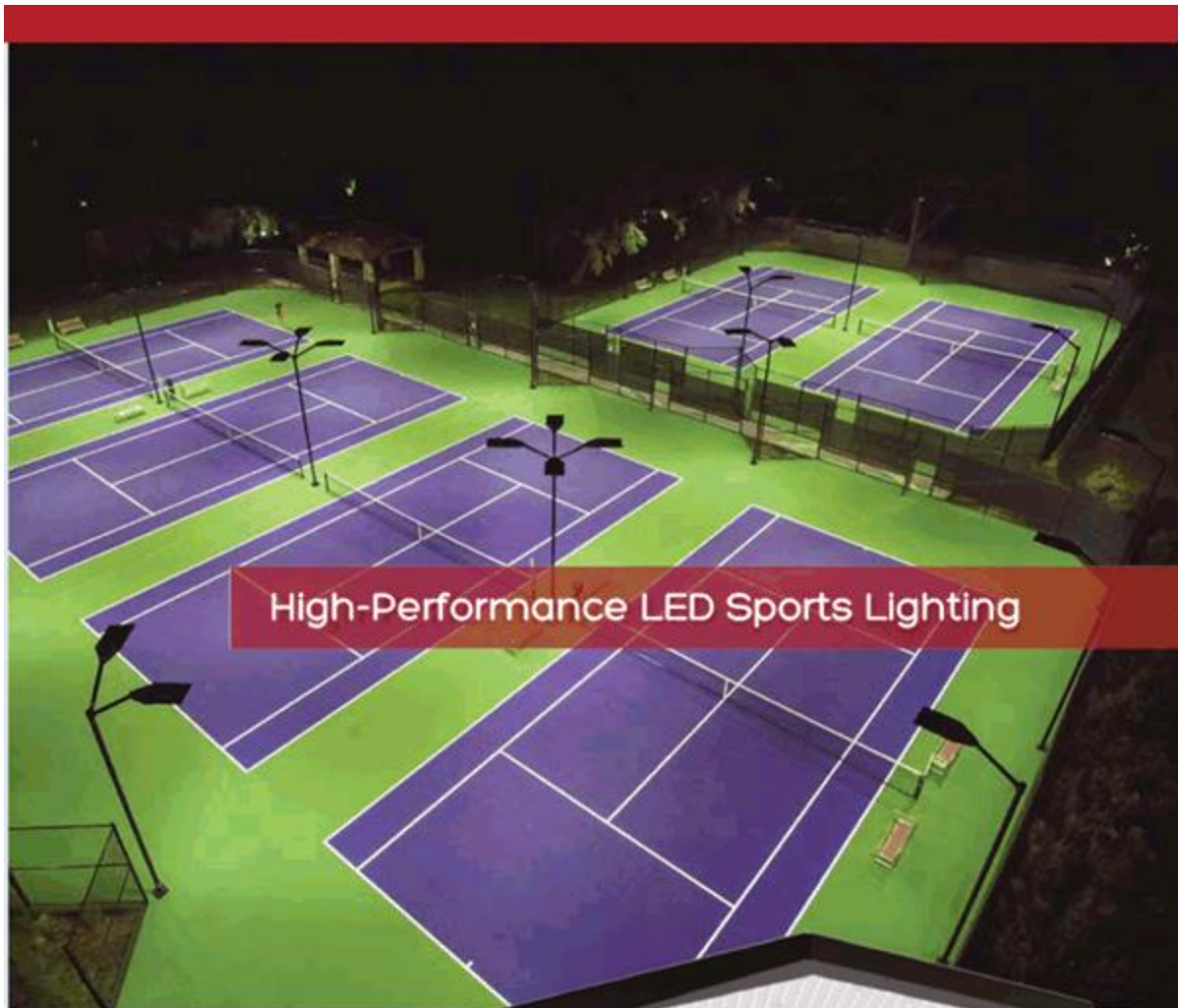
Issue:
22A

Address: 65A BARTON ST
KOGARAH
HAWTHORNE STREET RAMSGATE

Scale:
1:300

Date:
1 AUGUST 2016

DATE	ISSUE	AMENDMENT



LSI CourtBlade (XARL)
LED Sports Lighting

lsi-industries.com



CourtBlade
(XARL)
LED Sports
Lighting

High Performance Sports Lighting Experience, Service and Innovation

With more than 35 years experience, focused exclusively on sports lighting, LSI Industries is recognized as one of the most experienced, respected and customer driven sports lighting suppliers in the industry.

As a result of highly personalized service, we can offer a complete line of innovative, high-performance, energy-efficient lighting solutions for indoor/outdoor tennis courts and other selected specialty sports applications. LSI Industries delivers the best lighting consultation expertise. We offer the right lighting solution for your sports venue to satisfy the player, spectator, community and environmental requirements.



LSI CourtBlade (XARL) LED Sports Lighting features

LSI's CourtBlade LED sports light is a game changer for court lighting applications. The low profile CourtBlade utilizes high performance LEDs and precise optics to produce superior levels of illumination and uniformity. Compared with typical HID court lighting systems, the energy load is reduced by 50%.

- High Performance, Full Cutoff LED
- Aerodynamic, Low-Profile Shape
- 50% Energy Reduction vs. 1000W Metal Halide
- 60,000 - 100,000 Hr Expected Life
- Direct Retrofit Mounting of LSI Courtsider® and Aerosystem® fixtures
- Matching Poles & Brackets Available
- Lightweight for Easy Installation (55 lbs.)
- Consistent lumen output over fixture life
- Instant On and Dimmable
- Optional wireless control available
- 5-Year Warranty
- Surge protection built-in
- Photometric Testing (3rd Party Tested)
- Glass lens over LED nodes vs Acrylic



Micro-Louver Optical System

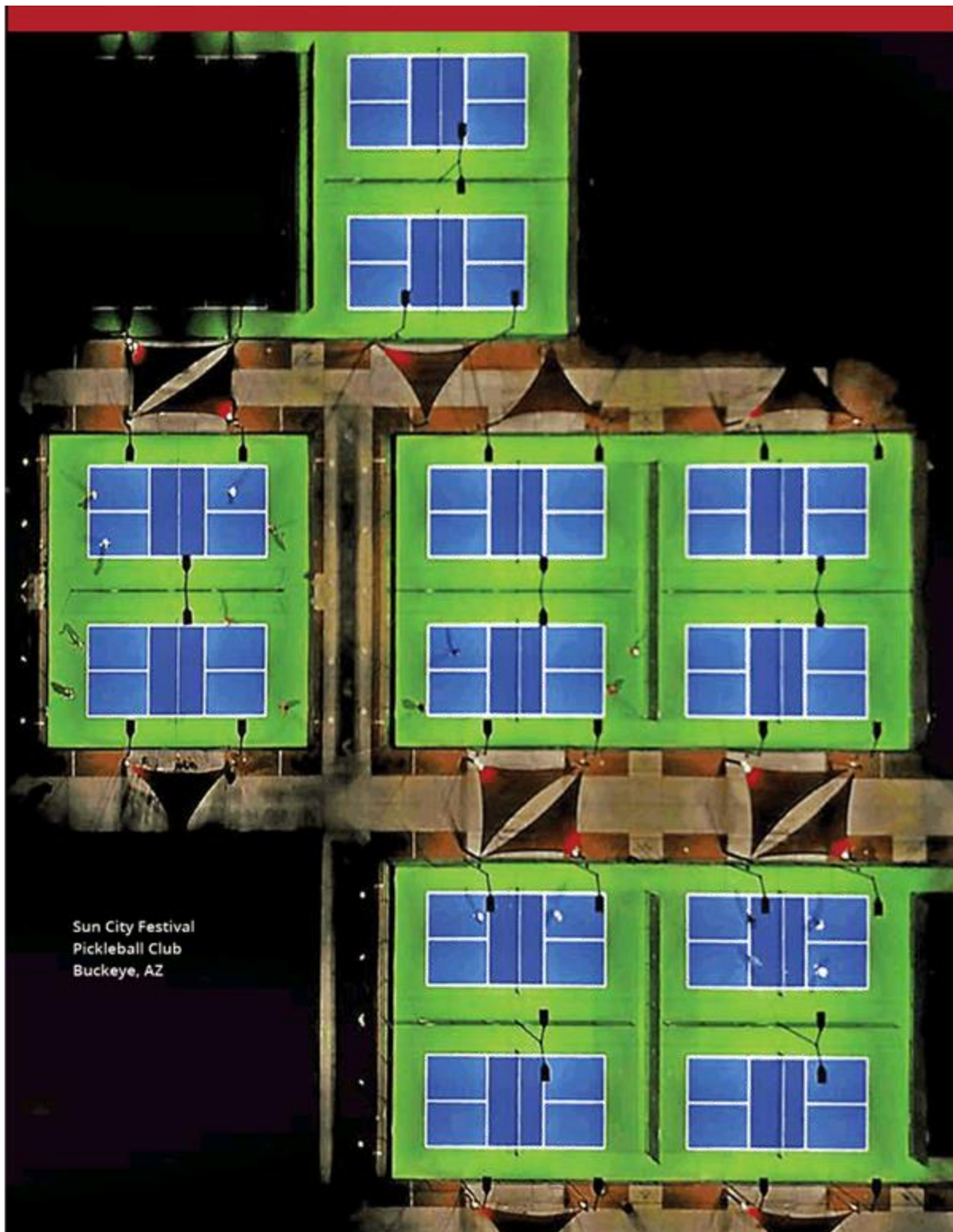


The CourtBlade fixture's innovative Micro-Louver optical system provides a controlled forward throw distribution with sharp backside cutoff.

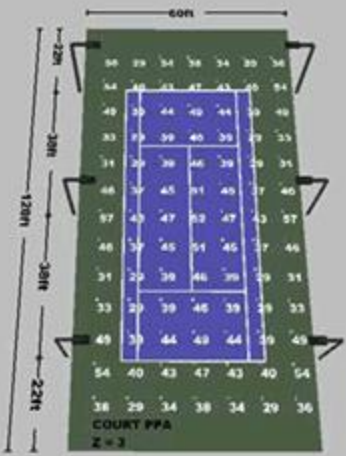
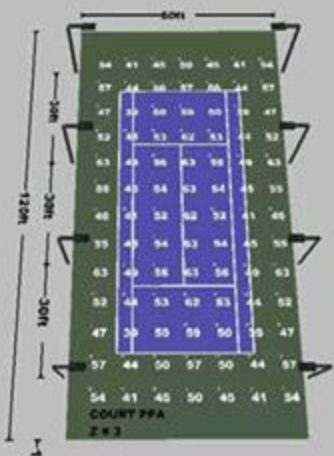
The 3D product illustration (above) shows an enlarged section of 15 of the 266 total mid-power LED chips of the optical system. The system also contains a secondary highly specular anodized aluminum reflector for each LED, and a clear flat glass lens. The reflector projects light forward and laterally to illuminate the court surface and the vertical ball travel area above the court.

The reflector design also reduces direct glare from the fixture at normal viewing angles. The photometric performance is verified by a third party, independent testing laboratory (ITL Boulder).





Standard Layouts

6 Fixtures Per Court (60' x 120')		8 Fixtures Per Court (60' x 120')	
			
• 528 Watts	• 22' Mounting Height	• 528 Watts	• 22' Mounting Height
• 58,977 Initial Lumens	• 0.9 Light Loss Factor (LLF)	• 58,977 Initial Lumens	• 0.9 Light Loss Factor (LLF)
Primary Playing Area (PPA) - 48' x 98'		Primary Playing Area (PPA) - 48' x 98'	
Average Maintained - 40.48 @ 3' above grade		Average Maintained - 50.99 @ 3' above grade	
PPA Max : Min - 1.97		PPA Max : Min - 1.62	
PPA Coefficient of Variation (CV) - 0.19		PPA Coefficient of Variation (CV) - 0.13	
PPA Uniformity Gradient (UG) - 1.50		PPA Uniformity Gradient (UG) - 1.32	

Configurations

	Single		D180°		D70°		Q90°
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LED Create-A-Court Configurator

Use the design configurator to locate the appropriate LED lighting design(s) for your court application based upon the selection of design parameters. The lighting design(s) are offered in the PDF file format for easy web viewing, transfer and printability. To access the Create-A-Court configurator, please scan the QR Code or visit:

www.lsi-industries.com/products/create-a-court-configurator.aspx



LSI CourtBlade (XARL) Specifications



DOE LIGHTING FACTS

Department of Energy has verified representative product test data and results in accordance with its Lighting Facts Program.

Visit www.lightingfacts.com for specific catalog strings.

LIGHT OUTPUT - XARL			
		Lumens (Nominal) Type FT	Watts (Nominal)
Cool White	HO	58977 ¹	528
Neutral White	HO	56960 ²	528

LED Chips are frequently updated therefore values may increase.

1 - Verified by ITL Report ITL 86921
(Available upon request)

2 - Verified by ITL Report ITL 86920
(Available upon request)

- **SMARTTEC™** - LSI drivers feature integral sensor which reduces drive current, when ambient temperatures exceed rated temperature.
- **ENERGY SAVING CONTROL OPTION** - DIM - 0-10 volt dimming enabled with controls by others.
- **EXPECTED LIFE** - Minimum 60,000 hours to 100,000 hours depending upon the ambient temperature of the installation location. See LSI web site for specific guidance.
- **LEDS** - Select high-brightness LEDs in Cool White (5000K), or Neutral White (4000K) color temperature, 70 CRI.
- **DISTRIBUTION/PERFORMANCE** - High performance, multi-faceted, reflector provides uniform Forward Throw (FT) distribution with sharp backlight cutoff. Photometric data is tested in accordance with IESNA guidelines.
- **HOUSING** - One-piece, die-formed aluminum housing contains factory prewired driver in a gasketed, weather-resistant wiring compartment. Hinged wiring access door (with safety lanyard) located underneath. Fixture is IP65 rated.
- **OPTICAL UNIT** - Clear tempered optical-grade flat glass lens permanently sealed to weathertight aluminum optic frame (includes pressure-stabilizing breather).
- **MOUNTING** - The fixture is furnished with installed stainless steel, threaded mounting studs protruding from the rear of the housing. Stainless steel nuts and washers used to secure the fixture to the bracket are also included.
- **ELECTRICAL** - Two-stage surge protection (including separate surge protection built into electronic driver) meets IEEE C62.41.2-2002, Location Category C. Available with universal voltage power supply 120-277VAC (50/60Hz input) and 347-480 VAC.
- **DRIVER** - Available in HO (High Output) drive current. Components are fully encased in potting material for moisture resistance. Driver complies with FCC standards. Driver and key electronic components can be easily accessed.
- **OPERATING TEMPERATURE** - -40°C to +50°C (-40°F to +122°F)
- **FINISH** - Fixtures are finished with LSI's DuraGrip® polyester powder coat finishing process. The DuraGrip finish withstands extreme weather changes without cracking or peeling.
- **WARRANTY** - LSI LED fixtures carry a limited 5-year warranty.
- **PHOTOMETRICS** - Please visit our web site at www.lsi-industries.com for detailed photometric data.
- **SHIPPING WEIGHT** - 55 lbs./24.9Kg (in carton)
- **LISTING** - UL listed to US and international safety standards. Suitable for wet locations

US patent D726,947 7,928,456 8,002,428 8,177,386 8,434,893 8,567,983 and US & Int'l. patents pending.

Finishes







All LED CourtBlade (XARL) components are finished with DuraGrip®, Courtsider Sports Lighting's revolutionary, superior, baked-on powder finishing process that produces an exceptionally attractive appearance. DuraGrip polyester finish withstands extreme weather changes without cracking or peeling. Finish is guaranteed for a full five years.

Ordering Information

Prefix	Distribution	Light Source	Drive Current	Color Temperature	Input Voltage	Finish	Options
XARL	FT Forward Throw	LED	HO High Output	CW Cool White (5000K) NW Neutral White (4000K)	UE Universal Voltage (120-277V) 347-480 Universal Voltage (347-480V)	BLK - Black GRN - Green BRZ - Bronze PLP - Platinum Plus WHT - White GPT - Graphite MSV - Metallic Silver	DIM 0-10V Dimming (from External Signal)

Typical Order Example: **XARL FT LED HO CW UE WHT**

Luminaire EPA Chart XARL (fixture & bracket)		
	Single	1.2
	D180°	2.4
	D70°	1.8
	Q90°	4.3

NOTE: House Side Shield adds to fixture EPA. Consult Factory.

Accessory Ordering Information	
Description	Order Number
XLCL-FT-HSS RM - External House Side Shield (Black only - rear mounted)	610098BLK ¹
FK120 - Single Fusing (120V)	FK120 ²
FK277 - Single Fusing (277V)	FK277 ²
DFK208,240 - Double Fusing (208V, 240V)	DFK208,240 ²
DFK480 Double Fusing (480V)	DFK480 ²
FK347 Single Fusing (347V)	FK347 ²

Accessories are field installed.

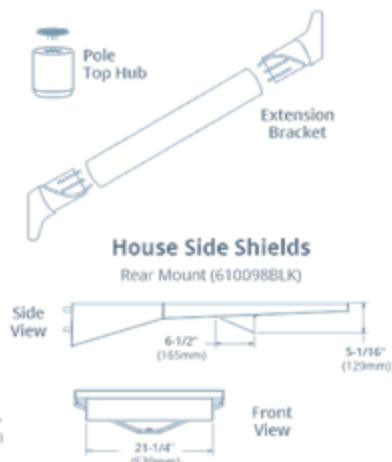
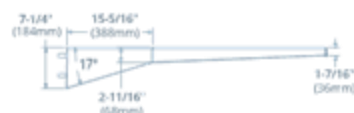
Electrical Requirements	
120V	4.6 amps
208V	2.6 amps
240V	2.3 amps
277V	2.0 amps
347V	1.6 amps
480V	1.2 amps

Bracket Ordering Information				
Bracket Designation	Bracket Type	Bracket Configuration	Length	Bracket Finish
BRKT - Extension Bracket ¹	BO - Bolt On	S - Single	38"	BLK - Black BRZ - Bronze GPT - Graphite MSV - Metallic Silver PLP - Platinum Plus GRN - Green WHT - White
BRKT - Pole Top Hub ³	4ESF - External Splitter	S - Single D180 - Double D70 - Double D90 - Double Q90 - Quad Q70 - Quad	*	

FOOTNOTES:

- 1 - House Side Shields add to fixture EPA. Consult Factory.
- 2 - Fusing must be located in hand hole of pole.
- 3 - One extension bracket is required per fixture.
- 4 - Pole top hub will fit over 4" OD pole or 5" OD pole with 4" tenon.
- 5 - Cap is included with pole top hub.

Dimensions



Bug Charts - XARL - Type FT					
Drive Current	Color Temp.*	Lumens	Watts	LER	BUG Rating
HO High Output	CW	58,977	528	112	B5-U0-G4
	NW	56,960	528	108	B5-U0-G5

A proud member of **ASBA** (American Sports Builders Association) and **TIA** (Tennis Industry Association)



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Along with tennis, LSI Sports Lighting have experience in designing lighting systems for other outdoor activities, including basketball courts, volleyball courts, and skate parks. In the past, we have provided lighting systems for universities, recreation centers, municipalities, and private residences. With multiple fixtures to choose from, LSI can recommend the right product for your project.



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Bayside Local Planning Panel

10/09/2019

Item No	6.2
Application Type	Development Application
Application No	DA-2019/143
Lodgement Date	01/05/2019
Property	24 Albert Street, Botany
Ward	Ward 2
Owner	Mr J O'Rourke & Mrs J V O'Rourke
Applicant	Champion Homes Sales Pty Ltd
Proposal	Demolition of existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings
No. of Submissions	One (1)
Cost of Development	\$696,598
Report by	Michael McCabe, Director City Futures

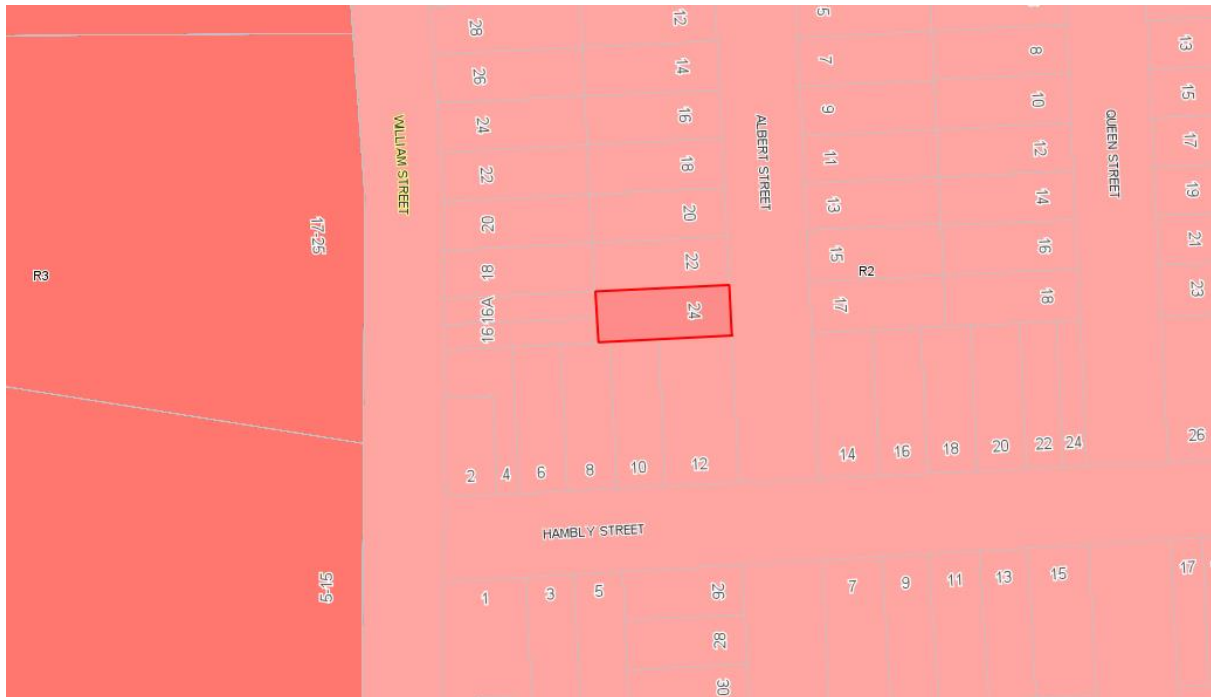
Officer Recommendation

- 1 That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 not support the variation to the floor space ratio prescribed by cl4.4 Floor Space Ratio of the Botany Bay Local Environmental Plan 2013, as it is not satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would not be in the public interest because it is not consistent with the objectives of that particular standard and the objectives for development within the zone.
 - 2 That the Development Application No. 2019/143 for the demolition of existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings, be REFUSED pursuant to Section 4.6(1)(b) of the *Environmental Planning and Assessment Act 1979* (EPA Act) and is recommended for refusal subject to the following reasons:
 - a) Pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposed development does not satisfy Clause 4.4A of the Botany Bay Local Environmental Plan 2013 relating to non-compliance with the floor space ratio development standard of 0.5:1. Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to floor space ratio.
 - b) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not meet the following sections of the Botany Bay Development Control Plan 2013 with respect to the following:
-

- i) Part 3A – Car Parking and Access. The proposed development does not comply with the requirements of Part 3A.3.1 C16 iii) relating to loss of on-street parking;
 - ii) Part 3G – Stormwater Management. The proposed development does not comply with Part 10 – Stormwater Management Technical Guidelines does not provide accurate detail on the on-site detention system proposed on the site;
 - iii) Part 4A.2.8 - Building Setbacks. The proposed development does not comply with the minimum side setback requirements imposed in control 1 and 9, and is inconsistent with the dominant pattern along the street;
 - iv) Part 4A.4.1 – Visual Privacy. The proposed development does not comply with control 1, 2, 3, 4, and 5, as it will pose overlooking impacts upon the adjoining properties;
 - v) Part 4A.3 – Solar Access. The proposed development does not comply with control 1 regarding to the minimum sunlight required for proposed and adjoining properties; and
 - vi) Part 8 – Character Precincts. The proposed development does not comply as it is inconsistent with the desired future character of the Botany Precinct.
- c) Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is excessive in terms of bulk and scale resulting in unnecessary overshadowing impacts to the property to the south.
- d) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
- e) Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land.
- f) Having regard to the issues raised in the submission received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, the proposal results in unacceptable levels solar amenity and excessive bulk and scale impacts onto neighbouring properties.
- g) Pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not considered to be in the public interest as it is inconsistent with the existing and desired future character of the locality resulting in excessive bulk and scale impacts such as overshadowing and the unnecessary reduction in on-street car parking spaces.

3 That the submitter be notified of the Bayside Local Planning Panel's decision.

Location Plan



Attachments

- 1 Planning Assessment Report [↓](#)
- 2 Site Plan [↓](#)
- 3 East & West Elevation [↓](#)
- 4 North & South Elevation [↓](#)
- 5 Shadow Diagrams [↓](#)
- 6 Shadow Elevations (June) [↓](#)
- 7 Shadow Elevations (March, September) [↓](#)
- 8 Landscape Plan [↓](#)
- 9 Clause 4.6 [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2019/143
Date of Receipt:	1 May 2019
Property:	24 Albert Street, Botany Lot 1 in DP 518481
Owners:	Mr J O'Rourke & Mrs J V O'Rourke
Applicant:	Champion Homes Sales Pty Ltd
Proposal:	Demolition of existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings.
Recommendation:	Refusal
Value:	\$698,598.00
No. of submissions:	One (1)
Author:	Christopher Lazaro, Development Assessment Planner
Date of Report:	26 August 2019

Key Issues

Bayside Council received Development Application No. 2019/143 on 1 May 2019 seeking consent for the demolition of existing structures, Torrens Title subdivision into two (2) lots, construction of two (2) semi-detached dwellings at 24 Albert Street, Botany.

The application was placed on public exhibition for a 14 day period from the 10 May 2019 till the 24 May 2019. One (1) submission was received in response.

The development application includes a number of non-compliances, specifically, with relation to the FSR development standard within the Botany Bay Local Environmental Plan 2013, and non-compliances with the BBDCP 2013 requirements for car parking, setbacks, visual privacy, solar access, stormwater management and streetscape presentation.

The key issues are in relation to the FSR exceedance which is found to create unnecessary bulk and scale resulting in solar access issues that can be avoided with a more appropriate design. Secondly, the driveway layouts result in the removal of one on-street car parking space with the driveways considered to dominate the streetscape despite there being more appropriate designs available.

In accordance with the Botany Bay Local Environmental Plan 2013, the proposal does not comply with the maximum 0.5:1 FSR development standard as the proposal seeks an overall

Item	Bayside Planning Panel Meeting
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FSR of 0.61:1. The applicant has provided a Clause 4.6 variation for the FSR, however Council does not support the variation.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* (EPA Act) and is recommended for refusal, subject to the reasons of refusal in the attached schedule.

Recommendation

It is RECOMMENDED:

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the *Environmental Planning and Assessment Act 1979* not support the variation to the floor space ratio prescribed by cl4.4 Floor Space Ratio of the Botany Bay Local Environmental Plan 2013, as it is not satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would not be in the public interest because it is not consistent with the objectives of that particular standard and the objectives for development within the zone.
2. That the Development Application No. 2019/143 for the demolition of existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings, be REFUSED pursuant to Section 4.6(1)(b) of the *Environmental Planning and Assessment Act 1979* (EPA Act) and is recommended for refusal subject to the following reasons:
 - a) Pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposed development does not satisfy Clause 4.4A of the Botany Bay Local Environmental Plan 2013 relating to non-compliance with the floor space ratio development standard of 0.5:1. Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to floor space ratio.
 - b) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not meet the following sections of the Botany Bay Development Control Plan 2013 with respect to the following:
 - i) Part 3A – Car Parking and Access. The proposed development does not comply with the requirements of Part 3A.3.1 C16 iii) relating to loss of on-street parking;
 - ii) Part 3G – Stormwater Management. The proposed development does not comply with Part 10 – Stormwater Management Technical Guidelines does not provide accurate detail on the on-site detention system proposed on the site;

- iii) Part 4A.2.8 - Building Setbacks. The proposed development does not comply with the minimum side setback requirements imposed in control 1 and 9, and is inconsistent with the dominant pattern along the street;
 - iv) Part 4A.4.1 – Visual Privacy. The proposed development does not comply with control 1, 2, 3, 4, and 5, as it will pose overlooking impacts upon the adjoining properties;
 - v) Part 4A.3 – Solar Access. The proposed development does not comply with control 1 regarding to the minimum sunlight required for proposed and adjoining properties; and
 - vi) Part 8 – Character Precincts. The proposed development does not comply as it is inconsistent with the desired future character of the Botany Precinct.
- c) Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is excessive in terms of bulk and scale resulting in unnecessary overshadowing impacts to the property to the south.
 - d) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
 - e) Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land.
 - f) Having regard to the issues raised in the submission received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, the proposal results in unacceptable levels solar amenity and excessive bulk and scale impacts onto neighbouring properties.
 - g) Pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not considered to be in the public interest as it is inconsistent with the existing and desired future character of the locality resulting in excessive bulk and scale impacts such as overshadowing and the unnecessary reduction in on-street car parking spaces.
3. That the submitter be notified of the Bayside Local Planning Panel's decision.

Background

Application History

Activity	Date
Application lodged	1 May 2019
Site Inspection	16 May 2019

The application was notified in accordance with BBDCP 2013. One submission was received as a result.	Notification period (10 – 24 May 2019)
Request for additional information letter issued requiring the following: <ul style="list-style-type: none"> Reduction in FSR, particularly to the rear to reduce bulk and scale and comply with solar access requirements. Amalgamation of the driveways to accommodate an on-street car parking space and street tree. Incorporate a 900mm setback on the northern boundary of lot 12. An amended landscape plan stating the tree along the rear boundary is to be retained rather than removed. Maintain consistency with the front building line of the street. Provide a geotechnical report to demonstrate an appropriate absorption rate and the depth of the ground water table. 	30/31 May 2019
Amended plans/documentation received: <ul style="list-style-type: none"> FSR/ Solar Access – No change Amalgamation of the driveways – No change 900mm setback on the northern boundary – No change An amended landscape plan - Provided Maintain consistency with the front building line - Provided Provide a geotechnical report to demonstrate an appropriate absorption rate and the depth of the ground water table – Provided, insufficient 	14 June 2019

Description of Proposal

The development application seeks Council consent for the demolition of the existing structures, Torrens Title subdivision into two (2) lots and construction of two (2) semi-detached dwellings at 24 Albert, Botany.

The specifics of the proposal are as follow:

- Demolition of existing structures on site including single storey detached dwelling and detached rear shed;
- Construction of two (2) double-storey semi-detached dwellings consisting of the following:
 - Ground floor – Single garage, bathroom, laundry, kitchen, family room and outdoor living area;
 - First floor – Bedroom 1 with ensuite, Bedroom 2, 3 & 4 and bathroom.
- Construction of two new driveways;
- Associated landscape and stormwater drainage works including the removal of a street tree; and
- Torrens Title subdivision into two (2) lots
 - Lot 11 – 218.1m²
 - Lot 12 – 203.8m²

Site Description

The subject site is located on the western side of Albert Street, Botany between Morgan Street to the north and Hambly Street to the south. The subject site is rectangular in shape with a total area of 421.9m² and is oriented east to west with east being the front. The northern and southern side boundaries have lengths of 33.46m and the eastern front and western rear

boundaries have widths of 12.8m and 12.43m respectively. The site is relatively flat and consists of a single-storey detached dwelling with a shed at the rear. The site is located in the R2 Low Density Residential zone.



Figure 1 – Location of subject site

Statutory Considerations

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S.4.15(1) - Matters for Consideration – General

S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. 993642M dated 27 February 2019 prepared by Building & Energy Consultants Australia committing to environmental sustainable measures.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of Part 3K- Contamination of the Botany Bay Development Control Plan 2013. The likelihood of encountering contaminated soils on the subject site is considered to be extremely low given the following:

1. The site appears to have been continuously used for residential purposes;
2. The adjoining and adjacent properties are currently used for residential purposes;

3. The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in SEPP 55, in particular industrial, agricultural or defence uses.

On this basis, the site is considered suitable in its present state for the proposed residential development. No further investigations of contamination are considered necessary.

Botany Bay Local Environmental Plan 2013

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone		The site is located within the R2 Low Density Residential zone.
Is the proposed use/works permitted with development consent?	Yes	The proposed development is for two semi-detached dwellings, which is permissible with consent in the R2 zone. The proposed semi-detached dwellings are permissible with Council's consent under the BBLEP 2013.
Does the proposed use/works meet the objectives of the zone?	No- Refer to Note 1 – Clause 4.6 Variation relating to FSR Standard	The proposed development is not consistent with all the relevant objectives of the R2 – Low Density Residential zone. The proposal does not continue providing for the housing needs of the community within a low density residential environment given it creates adverse overshadowing impacts and reduces on street car parking.
What is the height of the building? Does the height of the building comply with the maximum building height?	Yes	The height of the proposed building is 7.47m (RL 14.951 – NGL RL 7.480) and therefore does not exceed the maximum 8.5m height shown for the land on the Height of Buildings Map. Furthermore, the proposed height of the development is consistent with the desired future character of the area and does not adversely affect the streetscape or adjoining properties with regards to visual privacy, solar access and view corridors. Accordingly, the proposed height of the building satisfies the objectives of this clause.
What is the proposed Floor Space Ratio?	No- Refer to Note 1 – Clause 4.6 Variation	The subject site is located within Area 3 as shown on the FSR map. The proposed lots 11 and 12 have areas of 218m ² and 203m ² respectively which allows a

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?	relating to FSR Standard	maximum FSR of 0.5:1 as per Clause 4.4A (3)(d) of the BBLEP 2013. The proposed FSR for lots 11 and 12 is 0.59:1 and 0.60:1 respectively. In this regard, the proposed FSR is non-compliant with this provision. Refer to Clause 4.6 discussion.
Is the site within land marked "Area 3" on the Floor Space Ratio Map? If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?	No- Refer to Note 1 – Clause 4.6 Variation relating to FSR Standard	The site is located in an Area 3 zone. The proposal does not comply with the maximum permitted FSR.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The site is not listed as a heritage item, nor is it located within a Heritage Conservation Area.
6.1 – Acid Sulphate Soils	Yes	The site is affected by ASS Class 4 that is defined as works more than 2 metres below the natural ground surface or works by which the water table is likely to be lowered more than 2 metres below the natural ground surface. The proposed works will involve minor excavation and will therefore not trigger a requirement for ASS assessment.
6.3 – Stormwater Management	No – Refer Part 3G Stormwater Management	An absorption system needs to be provided in order mitigate stormwater runoff. The application has been referred to Council's Development Engineer who does not support the proposed stormwater system as discussed in more detail in Part 3G Stormwater Management.
6.8 – Airspace Operations	Yes	The subject site is affect by the 51m OLS height limit. However, the maximum RL height of the building sits at 14.951m AHD and will therefore not penetrate the maximum height limit.
6.9 – Development in areas subject to aircraft noise	Yes	The subject site is located within the 20 and 25 ANEF contours and is therefore subject to aircraft noise. As a result, noise mitigation measures are required for the proposed development. An acoustic report was submitted addressing the requirements outlined in the relevant Standards.

Note 1 – Clause 4.6 Variation relating to FSR Standard

The applicant seeks to vary the Floor Space Ratio development standard of 0.5:1 under the BBLEP2013. Refer to the below gross floor area and proposed FSR calculations (Council calculations) for each dwelling below:

Dwelling 1 (Lot 11):

- Site Area:	218.1m ²
- Maximum Permitted GFA:	109.05m ²
- Proposed GFA:	127.7m ²
- Proposed FSR:	0.59:1 (17.1% exceedance)

Dwelling 2 (Lot 12):

- Site Area:	203.8m ²
- Maximum Permitted GFA:	101.9m ²
- Proposed GFA:	121.52m ²
- Proposed FSR:	0.60:1 (19.25% Exceedance)

The site is located within 'Area 3' on the FSR map and therefore is subject to Clause 4.4A of the BBLEP2013. The objectives of this Clause are as follows:

- a) *To ensure that the bulk and scale of development is compatible with the character of the locality; and*
- b) *To promote good residential amenity.*

Pursuant to Clause 4.4A(3)(d), the proposal is defined as '*semi-detached dwelling*' and not defined as '*dwelling houses*' or '*multi-dwelling*' housing. As such the building type would fall under the category of '*all other development for the purpose of residential accommodation*'. Given the above, the maximum permitted FSR for the subject site is 0.5:1. The permissible FSR for a dwelling house on a lot of the same size is 0.8:1.

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

(2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument...

(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Secretary has been obtained.*

The Applicant has provided a Clause 4.6 variation statement to justify contravening the FSR standard. Their justification is provided below:

4.6(3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Applicant's Comment:

The applicant puts forth the argument that compliance with the Floor Space Ratio Development Standard would be 'unreasonable' or 'unnecessary'. The written request invokes a number of common ways in which a development standard can be found unreasonable or unnecessary as established by the Land and Environment Court in *Wehbe v Pittwater Council*.

The written request states that:

- The objectives of the development standard have been met through skilful design and that compliance with the numerical requirements would prevent the objectives of the standard from being met.
- Additionally, on lots of the same size, detached dwellings have a higher permitted FSR than what is permitted for semi-detached dwellings and would inherently undermine the objectives of the standard that relate to bulk and scale.

Planner's Comment:

Council does not support the argument put forward in the applicant's written request that compliance with the development standard is unreasonable or unnecessary. The following comments are made in this respect:

- The development has not satisfied the objectives relating to bulk and scale through skilful design because bulk and scale impacts are occurring. Specifically, the overshadowing impacts to the southern neighbour.

4.6(3)(b) There are environmental planning grounds to justify the contravention of the standard

Applicant's comment:

In order to justify contravening the development standard, sufficient environmental planning grounds must be advanced in the applicant's written request. Furthermore, the justification must specifically relate to aspect of the proposal that contravenes the development standard, in this case the floor space ratio, and not the development as a whole as established in *Initial*

Action Pty Ltd v Woollahra Municipal Council 2018. Additionally, the environmental planning grounds advanced must justify the contravention of the development standard, and not simply promote the benefits of carrying out the development as a whole.

The planning grounds advanced in the applicant's written request are as follows:

- The public will benefit from increasing the supply and diversity as well as renewing the existing housing stock.
- That a reduction in floor space will limit the internal amenities of the dwelling such as amount of bedrooms and size of living areas.
- That the development enhances the amenity of the streetscape.
- That the larger floor area affords greater residential amenity such as off-street car parking and reasonably sized living areas.

Planner's comment:

Council does not support the argument put forward in the applicant's written request that there are sufficient planning grounds to justify the contravention. The following comments are made in this respect:

- A complying development will also satisfy point 1 and 3 and therefore cannot be considered environmental planning grounds for justifying the contravention.
- Increasing internal amenities afforded by large floor areas, such as larger living areas and increased number of bedrooms is not considered environmental planning grounds for justifying the contravention.

Clause 4(a)(i) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

Planner's Comment: It is considered that the argument put forward by the applicant demonstrating the requirements of subclause (3) is not supported by Council.

Clause 4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone which the development is proposed to be carried out.

Applicant's Comment:

The objectives of the development standard are:

- To ensure that the bulk and scale of development is compatible with the character of the locality,
- To promote good residential amenity.

The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents
- To encourage development that promotes walking and cycling.

The proposed development satisfies the above objectives as follows:

- The proposed scale of development (i.e., semi-detached dwellings to replace the existing aging dwelling house) will meet the housing needs of the community and add to the range of housing within the low density residential zone.
- Consideration has been given to the existing amenity and character of the area and it is considered that the proposed development is sympathetic and harmonious with nearby development in the Botany locality and will complement the existing character.
- The proposed development will enhance the amenity of the residential area by the provision of new housing stock and landscaping.
- Public transport is available within walking distance.

Planners Comments:

As established in *Initial Action Pty Ltd v Woollahra Municipal Council 2018*, if a development will be in the public interest if it is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out. Council is not satisfied that the proposed development is in the public interest as it is inconsistent with the following objectives:

- Floor Space Ratio Objectives:
 - The proposed bulk and scale is not compatible with the character of the area given it creates significant overshadowing impacts to the southern neighbour; and
 - Consequentially of the above, the proposed development does not promote good residential amenity.
- R2 – Low Density Residential Zone Objectives:
 - The proposed development does not provide for the needs of the community within a low density area given it creates adverse residential amenity impacts from overshadowing and reduces on-street car parking.

With consideration given to the above, the proposal is not consistent with the objectives of the FSR development standard, nor the objectives of the R2 – Low Density zone. Therefore it cannot be concluded that the proposed development is in the public interest. In this regard, Council is not satisfied that the applicant's written request provides adequate justification to vary the FSR development standard.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no current Draft EPIs applicable to this development:

S.4.15(1)(a)(iii) - Provisions of any Development Control Plan

Botany Bay Development Control Plan 2013

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013 as follows:

Part 3A – Parking & Access

Control	Proposed	Complies
3A.2 Parking Provisions of Specific Uses		

C2 Car parking provision shall be provided in accordance with Table 1. Attached Dwellings: 1 space/dwelling	Each dwelling provides one (1) off street car parking space within an attached garage.	Y
3A.3 Car Park Design		
C10 Off-street parking facilities are not permitted within the front setbacks.	The garage for each dwelling is located 2m behind the building line and is setback 6m from the front boundary.	Y
C12 Off-street parking facilities must not dominate the streetscape and are to be located away from the primary frontages of the site.	The proposal provides an attached garage for each dwelling which are located 2m behind the building line. The garages are not considered to dominate the streetscape.	Y
C14 A maximum of one vehicle access point is permitted per property. Council may consider additional vehicle access points for large scale developments.	Following subdivision, each property will have only one (1) vehicle access point off Albert Street.	Y
C16 The following general design principles shall be considered when planning access driveways for developments: (i) Separate ingress and egress vehicle access points shall be arranged for large scale developments to enable vehicular flow in a clockwise direction wherever possible; (ii) Reversing movements into and out of public roads shall be prohibited at all times (except for dwelling houses); (iii) The location of an access driveway shall be sited to minimise the loss of on-street parking; (iv) An access driveway at the property line shall be clear of obstructions, such as fences, walls, poles and trees which may prevent drivers from viewing pedestrians; and (v) The vehicle access point of the property shall be signposted with appropriate signs. (vi) No vehicles shall be allowed to queue in the public road reserve.	The proposed layout of the driveways will result in the loss of one on-street car parking space. Alternative approaches are available that prevent this reduction.	No - Refer to Note 3 – Car Parking
C28 The minimum width of the access driveway at the property boundary shall be:- (i) For dwelling houses: 3 metres	The proposed driveway widths comply.	

Part 3E – Subdivision and Amalgamation

Control	Proposed	Complies
3E.2.1 Residential Torrens Title Subdivision		
C1 Development Applications shall demonstrate that the proposed subdivision or	The proposed subdivision into two lots are both rectangular and	Y

<p>amalgamation is consistent with the Desired Future Character of the area (refer to relevant sections in Part 8 - Character Precincts, Part 9 - Key Sites, Part 5 - Business Centres and Part 6 - Employment Zones).</p> <p>C2 Proposed subdivision or amalgamation must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area; dimensions, shape and orientation (refer to Figure 1).</p> <p>Note: Council generally considers the 'prevailing subdivision pattern' to be the typical characteristic of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site. Properties located in the surrounding streets do not usually form part of the streetscape character and are therefore not taken into consideration when determining the prevailing subdivision pattern.</p> <p>C3 Development application which proposes the creation of new allotments must be accompanied by a conceptual building plan that demonstrates compliance with relevant building controls.</p> <p>C5 Proposed lots must be of a size and have dimensions to enable the siting and construction of a dwelling and ancillary structures that:</p> <ol style="list-style-type: none"> Acknowledge site constraints Address the street Minimize impacts on adjoining properties including access to sunlight, daylight, privacy and views Provide usable private open space Protect existing vegetation Mitigate potential flood affectation and stormwater management requirements Acknowledge contamination of the land Protect heritage items <p>C7 All lots created shall have at least one (1) frontage to the street.</p>	<p>therefore maintains the existing rectilinear grid pattern within the Precinct.</p> <p>The proposed subdivision will result in the lots maintaining the site depth, shape and orientation found with the prevailing subdivision pattern. However, the proposed site areas and site widths of Lot 11 (218.1m²) and Lot 12 (203.8m²) are smaller than the average found in the street.</p> <p>The development application seeks approval for Torrens title subdivision and construction of a semi-detached dwelling on each of the two subdivided lots. Architectural plans for the dwellings have been submitted, however do not comply with FSR, car parking, stormwater management, setbacks and solar access.</p> <p>The proposed lots are of a size and have dimensions that may effectively accommodate the construction of a dwelling and any ancillary structures.</p> <p>Both allotments have frontages to Albert Street.</p>	<p>Yes - Refer to Note 2 – Prevailing Subdivision Pattern</p> <p>N</p> <p>Y</p> <p>Y</p>
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Note 2 – Prevailing Subdivision Pattern

Address	Lot Size (approx. in sqm)	Lot size variation in sqm from the	Lot widths (approx. in m)	Lot width variation in m from the
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		smallest lot proposed (m ²)		smallest lot proposed (m)
24 Albert Street (Subject site)	Lot 11: 218.1m ² Lot 12: 203.8m ²	(Lot 12: 203.8m ²)	Lot 11: 6.655m Lot 12: 6.145m	(Lot 12: 6.145m)
1 Morgan Street	555.69	-351.86	15.51	-9.37
1 Albert Street	506.00	-302.20	15.20	-9.06
2 Albert Street	504.73	-300.93	15.00	-8.86
3 Albert Street	408.71	-204.91	12.40	-6.26
4 Albert Street	407.48	-203.68	12.10	-5.96
5 Albert Street	408.71	-204.91	12.00	-5.86
6 Albert Street	411.54	-207.74	12.30	-6.16
7 Albert Street	408.71	-204.91	12.20	-6.06
8 Albert Street	407.51	-203.91	12.10	-5.96
9 Albert Street	408.71	-204.91	12.30	-6.16
10 Albert Street	411.83	-208.03	12.20	-6.06
11 Albert Street	397.62	-193.82	11.80	-5.66
12 Albert Street	411.47	-207.61	12.20	-6.06
13 Albert Street	385.70	-181.90	11.60	-5.46
14 Albert Street	409.14	-205.34	12.10	-5.96
15 Albert Street	423.70	-219.90	12.80	-6.66
16 Albert Street	409.93	-206.13	12.30	-6.16
17 Albert Street	430.13	-226.33	12.80	-6.66
18 Albert Street	415.46	-211.66	12.30	-6.16
19 Albert Street	415.79	-211.99	12.30	-6.16
20 Albert Street	407.34	-203.54	12.10	-5.96
22 Albert Street	407.50	-203.70	12.20	-6.06
23 Albert Street	206.26	-2.46	6.10	+0.05
25 Albert Street	197.09	+6.71	5.90	+0.25
26 Albert Street	365.76	-161.96	12.40	-6.26
27 Albert Street	419.38	-215.58	12.40	-6.26
28 Albert Street	369.44	-165.64	12.10	-5.96
29 Albert Street	408.77	-204.97	12.50	-6.36
30 Albert Street	356.04	-161.24	11.90	-5.76
31 Albert Street	630.00	-426.20	15.40	-9.26
32 Albert Street	424.05	-220.25	12.70	-6.56

34 Albert Street	408.00	-204.20	12.50	-6.36
36 Albert Street	408.73	-204.93	12.10	-5.96
38 Albert Street	339.21	-135.41	10.30	-4.16
40 Albert Street	313.34	-109.54	13.70	-7.56
9 Swinbourne Street	669.43	-465.63	18.50	-12.36
13A Swinbourne Street	332.69	-128.89	9.20	-3.06
Average	410.85	-207.30	12.31	6.17

Table 1: Assessment of adjoining lots

Council generally considers the prevailing subdivision pattern to be the typical characteristic of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site. It is noted that the DCP does not provide any exclusions to how this subdivision pattern should be calculated in terms of zoning or subdivided developments approved prior to the gazettal of the BBLEP 2013. There is a mixture of various allotment sizes within the area which range from 197.09m² to 669.43m² in area, and 5.90m to 18.50m widths.

The site is located in the Botany Character Precinct which encourages the preservation of the rectilinear subdivision grid pattern within the precinct. The site has a total site area of 421.90m² with a primary street frontage width of 12.80m to Albert Street. The application proposes to create two rectilinear lots with the following measurements:

	Lot 11	Lot 12
Proposed lot size	218.1m ²	203.8m ²
Eastern frontage	6.66m	6.15m
Northern boundary	33.42m	33.42m
Southern boundary	33.45m	33.42m
Western rear	6.33m	6.10m

An assessment of the lot sizes and street frontage widths of the properties on either side of the subject site as well as the properties opposite the site has been considered, as shown in Table 1 above.

On its merits, the proposed subdivision is considered to be acceptable due to the following:

1. The proposed lots are capable of supporting dwelling houses which can achieve compliance with relevant controls such as floor space ratio, building height, landscaping, setbacks, private open space, privacy, car parking, overshadowing and solar access. This can be achieved through careful and considerate design of the dwellings; and
2. The proposed layout of the lots do not contravene the desired future character of the Botany precinct. The lots retain and preserve the rectilinear pattern with appropriate orientation.

In this regard, the assessment within this report demonstrates the proposal complies with the relevant provisions of the BBLEP 2013 and BBDCP 2013. Given that the proposed subdivision is consistent with the existing and future subdivision pattern in the immediate vicinity of the subject site, the proposed subdivision is supported, however, the design of the dwellings needs to be amended to comply.



Figure 2 – Existing subdivision Pattern

Part 3G – Stormwater Management

The Development Application was accompanied by stormwater plans and absorption rates which were prepared by ANAcivil Pty Ltd. The plans demonstrate that an absorption system is to be provided. A geotechnical report was not provided to justify the infiltration rate used in the design and as such was requested by Council. Upon receipt, the scheme was referred to Council's Development Engineer who does not support the proposed stormwater management system for the following reasons:

- The recommended absorption rate in the geotechnical report is much lower than the absorption rate adopted in the onsite absorption volume calculations;
- The spreadsheet absorption calculation shown on the stormwater plan does not appear to be accurate, the Jumbo trench volumes appear to be overestimated and a maximum 50% Rainwater tank offset can be used as an offset; and
- An additional 20% volume shall be provide to absorption systems that do not have a safe overflow to the street frontage in accordance with Botany bay Development Control Plan.

Part 3J – Aircraft Noise and OLS

The provisions of Australian Standard AS2021-2000 have been considered in the assessment of the development application as the subject site is located within the 20-25 ANEF contour. Residential development in these areas is considered 'conditional' under Table 2.1 of Australian Standard AS2021-2000. The development will result in an increase in the number of dwellings and people affected by aircraft noise. An acoustic report was submitted addressing the requirements outlined in the relevant Standards.

Part 3K – Contamination

The relevant requirements and objectives have been considered in the assessment of the development application. The subject site has long been utilised for residential purposes and it is unlikely that the land is contaminated. Furthermore, the application has been assessed against SEPP 55 and is found to be satisfactory. Further site investigation is not required necessary in this instance.

Part 3L – Landscaping and Tree Management

The proposal was referred to Council's Landscape Officer who supports the application subject to Tree Protection Zone's being established around the existing trees on site.

Part 3N – Waste Minimisation and Management

A Waste Management Plan prepared by DPLAN Urban Planning Consultants was submitted with the application listing methods for minimising and managing construction and ongoing waste on site.

Part 4A – Dwelling Houses

Control	Proposed	Complies
4A.2.2 Site Analysis		
C1 A Site Analysis Plan shall be submitted with all Development Applications to Council. For information regarding what should be identified on a Site Analysis Plan, refer to Council's Development Application Guide which is available at the Customer Services Centre or online via Council's website.	A site analysis plan has been provided.	Y
C2 An effective site analysis will: a. Identify key opportunities and affectations of the site; b. Demonstrate reasoning behind key design decisions; c. Influence design decisions to minimise negative impacts on amenity, and d. Demonstrate and uncover neighbourhood characteristics which the design will respond to.	The site analysis plan has not influenced design decisions to minimise impacts on amenity given there are significant overshadowing impacts as discussed in <i>Note 5 - Solar Access</i> . Additionally, the design has not responded to neighbourhood characteristics, specifically the availability of on-street car parking. The driveway layout removes one on-street car parking space despite there been alternative options as discussed in <i>Note 3 - Car Parking</i> .	No – Refer to Note 5 – Solar Access No – Refer to Note 3 – Car Parking
4A.2.3 Local Character		
C1 Development must be designed to respond to the opportunities and constraints identified in the Site Analysis.	The development has not been designed to respond to the constraints of the site as no attempt was made to mitigate overshadowing impacts to the southern property.	No – Refer to Note 5 – Solar Access
C2 Development must comply with the relevant Desired Future Character	The development does comply with the desired future of the area. Refer to <i>Part 8 – Botany Character Precinct</i> .	No – Refer to Part 8 – Botany

Statements in Part 8 - Character Precincts.		Character Precinct
4A.2.4 Streetscape Presentation		
<p>C1 New dwellings must be designed to reflect the relevant Desired Future Character Statement in Part 8 - Character Precincts and are to reinforce the architectural features and identity which contributes to its character. Applicants must address the design principles outlined in the statement.</p> <p>C2 Development must be designed to reinforce and maintain the existing character of the streetscape.</p> <p>C3 Development must reflect dominant roof lines and patterns of the existing streetscape (refer to Figure 3).</p> <p>C4 Buildings must appropriately address the street. Buildings that are intrusive or inconsistent with the established development pattern will not be permitted.</p> <p>C6 The entrance to a dwelling must be readily apparent from the street.</p> <p>C7 Dwelling houses are to have windows to the street from a habitable room to encourage passive surveillance.</p> <p>C10 Development must retain characteristic design features prevalent in houses in the street including: verandas, front gables, window awnings, bay windows, face brickwork or stone details.</p>	<p>The proposal is located in a R2 Low Density Residential Zone. The immediate context is relatively low scale, consisting of single and double storey detached residential dwellings.</p> <p>The existing character of the streetscape is relatively consistent in relation to dwelling typology and subdivision pattern. These include approximately 12m wide frontages, 0.9m side setbacks, gabled or hipped roof forms and detached single dwelling forms. Notwithstanding, newer developments have introduced more contemporary architectural styles to the streetscape, most notably at 12, 12a and 12b Hambly Street.</p> <p>The proposed dwellings will present to Albert Street and maintain a consistent building line. The entrances to both dwellings are apparent from the street. Notwithstanding, Dwelling No. 2 does not have any habitable rooms presenting to the street.</p> <p>The existing streetscape consists of a mix of gable and hipped roof forms. There are also a variety of materials used, most notably, brickwork and weatherboards. The proposal incorporates a hipped roof form as well as face and rendered brick for the façade.</p>	<p>Y</p> <p>No</p> <p>Y</p>
4A.2.5 Height		
<p>C1 The maximum height of buildings must be in accordance with the Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.</p>	<p>Maximum Height: 8.5m</p> <p>Proposed Height: 7.47m</p>	Y
4A.2.6 Floor Space Ratio		
<p>C1 The maximum FSR of development must comply with the Floor Space Ratio Map and Clause 4.4 and 4.4A of the Botany Bay Local Environmental Plan 2013 (refer to Figure 12).</p>	<p>Maximum FSR: 0.5:1</p> <p>Proposed FSR:</p> <p>Dwelling 1: 0.59:1 (17.1% exceedance)</p> <p>Dwelling 2: 0.60:1 (19.25% Exceedance)</p>	No – Refer to Note 1 – FSR Variation
4A.2.7 Site Coverage		

<p>C2 For sites over 200m² the maximum site coverage is:</p> <p>200 – <250m² 65% of the lot</p>	<p>Site coverage areas for each lot listed below:</p> <p><i>Lot 11:</i> 91.6 sqm / 42%</p> <p><i>Lot 12:</i> 95.1 sqm / 47%</p>	Y
4A.2.8 Building Setbacks		
<p>C.1 Dwelling houses must comply with the following minimum setbacks as set out in Table 1.</p> <p><i>Lot Width of less than 12.5m:</i> <i>Minimum front setback</i> – comply with the prevailing street setback or 6 metres (min) <i>Minimum side setback</i> - Up to 2 floors 900mm (Council may require an increased setback due to streetscape and bulk considerations) <i>Minimum rear setbacks</i> – 6 metres (min) <i>Zero lot lines (with Council Discretion)</i> – On merit based on building type and open space provisions <i>Eaves</i> – 450mm minimum setback</p>	<p>Proposed Front Setback:</p> <p><i>Dwelling 01:</i> 4m (Prevailing street setback)</p> <p><i>Dwelling 02:</i> 4m (Prevailing street setback)</p> <p>Proposed Side Setbacks:</p> <p><i>Dwelling 01:</i> Northern – Nil (common wall), Southern – 965mm</p> <p><i>Dwelling 02:</i> Northern – Nil , Southern – Nil (common wall)</p> <p>A merit assessment of the side setbacks has been carried out and is discussed in detail in <i>Note 4 – Boundary Setbacks</i></p> <p>Proposed Rear Setbacks:</p> <p><i>Dwelling 01:</i> 9.17m</p> <p><i>Dwelling 02:</i> 9.17m</p>	<p>No – Refer to Note 4 – Boundary Setbacks</p>
<p>C5 To avoid the appearance of bulky or long walls side and rear setbacks should be stepped or walls articulated by projecting or recessing window elements, or a variation in materials.</p> <p>C9 In certain circumstances where terrace house dwelling forms are proposed, Council may grant consent to a development with a 0 metre setback to a side boundary. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Planning Principle "Building to the side boundary in residential areas" established in <i>Galea v Marrickville Council</i> [2003] NSWLEC 113 (or as updated) and consideration has been given to that statement. The Planning Principle is available to view on the Land and Environment Court's website (www.lawlink.nsw.gov.au/lec).</p>	<p>The proposal incorporates indents to both dwellings to ensure that large expanses of blank walls along the side boundaries between neighbouring properties are avoided and internal amenity of indoor living spaces is achieved.</p> <p>Refer to <i>Note 4 – Boundary Setbacks</i> for a detailed merit assessment.</p>	<p>Y</p> <p>No – Refer to Note 4 – Building Setbacks</p>
4A.2.9 Landscape Area		

<p>C1 Landscaped areas are to be designed accordance with Part 3L - Landscaping.</p> <p>C2 Development shall comply with the following minimum landscaped area requirements, based on the area of the site in Table 2.</p> <p>Table 2 requires the following minimum landscaped area:</p> <p>Less than 250 m² - 15%</p> <p>Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).</p> <p>C3 Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).</p> <p>C7 Where a building, driveway or pool is sited at the location of an existing tree, Council may require plans to be modified.</p> <p>C8 The front setback is to be fully landscaped with trees and shrubs and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area.</p>	<p>Landscaped areas for each lot listed below:</p> <p>Lot 11: 65.74 sqm / 30.14%</p> <p>Lot 12: 54.44 sqm / 25.71%</p> <p>The proposed landscaped area is predominantly deep soil area.</p> <p>The proposed driveways will result in the removal of one street tree. Additionally, it will limit the available space for a replacement tree. An amended driveway layout will provide a larger space and therefore accommodate a mature canopy tree.</p> <table><tr><td>Lot 11:</td><td>Front Setback area = 27m²</td></tr><tr><td></td><td>% Paved = 43.7%</td></tr><tr><td>Lot 12:</td><td>Front Setback area = 24.3m²</td></tr><tr><td></td><td>% Paved = 52.3%</td></tr></table>	Lot 11:	Front Setback area = 27m ²		% Paved = 43.7%	Lot 12:	Front Setback area = 24.3m ²		% Paved = 52.3%	<p>Y</p> <p>No</p> <p>Y</p> <p>No</p>						
Lot 11:	Front Setback area = 27m ²															
	% Paved = 43.7%															
Lot 12:	Front Setback area = 24.3m ²															
	% Paved = 52.3%															
4A.3.1 Materials and Finishes																
<p>C3 Materials, colours, architectural details and finishes must be sympathetic to the surrounding locality.</p> <p>C4 The use of materials with different textures such as brickwork, glass, timber weatherboards and iron awnings are to be used to break up uniform buildings.</p>	<p>A schedule of colours and finishes was provided with the application.</p> <p>The proposal is to incorporate a range of materials including:</p> <table><tr><td>Face Brick</td><td>PGH 'Highlands' bricks – Blackheath</td></tr><tr><td>Roof Tiles</td><td>Borwal Macquarie profile – twilight</td></tr><tr><td>Windows</td><td>Monument</td></tr><tr><td>Fascia</td><td>Colourbond monument</td></tr><tr><td>Cladding</td><td>Taubmans colourbond monument CB 66</td></tr><tr><td>Acrylic render</td><td>Taubmans apache stone</td></tr><tr><td>Garage doors</td><td>Colourbond monument</td></tr></table>	Face Brick	PGH 'Highlands' bricks – Blackheath	Roof Tiles	Borwal Macquarie profile – twilight	Windows	Monument	Fascia	Colourbond monument	Cladding	Taubmans colourbond monument CB 66	Acrylic render	Taubmans apache stone	Garage doors	Colourbond monument	<p>Y</p>
Face Brick	PGH 'Highlands' bricks – Blackheath															
Roof Tiles	Borwal Macquarie profile – twilight															
Windows	Monument															
Fascia	Colourbond monument															
Cladding	Taubmans colourbond monument CB 66															
Acrylic render	Taubmans apache stone															
Garage doors	Colourbond monument															

	Driveway	French grey	
	Gutters	Colourbond monument	
	Downpipes	Colourbond monument	
C10 The exterior walls of new dwellings must incorporate different materials, colours and textures to add interest and articulate the facade.	A mix of different coloured roof tiles can be found in the streetscape. The subject property proposes dark coloured roof tiles and is considered to be appropriate for the streetscape.		Y
C11 New development must incorporate colour schemes that are consistent with the predominant colour schemes in the street. No expansive use of white, light or primary colours which dominate the streetscape are permitted.	The proposed colour scheme is considered to complement the existing streetscape, consisting of dark grey, beige and brown coloured materials.		Y
4A.3.2 Roofs and Attics/Dormer			
C1 Where roof forms in a street are predominantly pitched, then any proposed roof should provide a similar roof form and pitch. Roof pitches are to be between 22.5 degrees and 40 degrees.	A mix of gable and hipped roof forms are found in the streetscape. The development proposes a hipped roof form which is compatible with the surrounding dwellings.		Y
C3 A variety of roof forms will be considered, provided that they relate appropriately to the architectural style of the proposed house and respect the scale and character of adjoining dwellings.			
4A.3.3 Fences			
C1 Front fences are to compliment the period or architectural style of the existing dwelling house.	No front fences have been proposed.		Y
4A.4.1 Visual Privacy			
C1 The privacy needs of residents should be considered in designing a new dwelling or alterations and additions to a dwelling. Windows are to be located so they do not provide direct or close views into the windows of other dwellings, particularly those of living areas.	The proposal minimises visual privacy impacts to neighbouring properties by preventing direct sightlines to adjoining windows and private open space areas.		No – Can be conditioned if approval is granted
C2 Visual privacy for adjoining properties must be minimised by: ▪ Using windows which are narrow or glazing which is translucent or obscured	Notwithstanding, Bedroom 1 and 2 of Dwelling 1 have windows that have direct sightlines to the southern neighbour's private open space and living area windows. In order to reduce this impact, raising the sill heights to 1.5m above the finished floor level will need to be incorporated into the design.		

<ul style="list-style-type: none"> ▪ Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings ▪ Screening opposing windows, balconies and courtyards; and ▪ Increasing sill heights to 1.5 metres above floor level. 		
4A.4.2 Acoustic Privacy		
C4 New dwellings on land within the Australian Noise Exposure Forecast (ANEF) Contour 20 or higher shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).	The proposed dwelling is within the 20-25 ANEF contour. An acoustic report has been submitted and addresses the requirements of the relevant Standards.	Y
4A.4.3 Solar Access		
<p>C1 Buildings (including alterations/additions/extensions) are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in living areas (family rooms, rumpus, lounge and kitchens) and to 50% of the primary private open space areas of both the subject site and adjoining properties.</p> <p>C2 Solar panels on adjoining houses that are used for domestic needs within that dwelling must not be overshadowed for more than two hours between 9am to 3pm in mid-winter.</p> <p>C3 Where the primary private open space of an adjoining development currently receives less than the required amount of sunlight on 21 June (50% coverage for a minimum of 2 hours), the proposed development must not further reduce the amount of solar access to the private open space of the adjoining development.</p> <p>C4 Council may grant consent to a development that does not comply with the 2 hours of solar access requirement. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Sunlight Planning Principle. The Planning Principle is updated by Court decisions and is available to view on the Land and</p>	<p>Shadow diagrams were provided with the subject application. The lots are east-west orientated. There are no solar panels on the adjoining dwellings. The proposal will impact upon the amount of solar access received directly south of each proposed property.</p> <p>See <i>Note 5 – Solar Access</i> for a detailed discussion.</p>	No – Refer to Note 5 – Solar Access

Environment Court's website (www.lawlink.nsw.gov.au/lec).		
C5 Where a neighbouring development currently receives less than the required amount of sunlight (on 21 June) the amount of sunlight available on the 21 March or the 21 September will be assessed and form a merit based assessment of the Development Application.		
4A.4.4 Private Open Space		
C1 Each dwelling is to have a private open space that: <ul style="list-style-type: none"> (i) Has at least one area with a minimum area of 36m²; (ii) Is located at ground level with direct access to the internal living areas of the dwelling; (iii) Maximises solar access; (iv) Is visible from a living room door or window of the subject development; (v) Minimises overlooking from adjacent properties; (vi) Is generally level; (vii) Is oriented to provide for optimal year round use; (viii) Is appropriately landscaped; and (ix) Is located or screened to ensure privacy; Note: Private open space is not to include: <ul style="list-style-type: none"> (i) Non-recreational structures (including garages, tool sheds and such like structures); (ii) Swimming pools; and (iii) Driveways, turning areas and car spaces, drying areas and pathways. C2 Sites less than 250m ² may have a minimum area of 25m ² . C5 The primary private open space area is to be located at the rear of the property.	Private open space areas for each lot are listed below: Lot 11: 73.98 sqm Lot 12: 69.82 sqm The private open spaces are located at ground level with direct access from the living areas. They receive adequate solar access and are appropriately landscaped and screened to ensure privacy.	Y
	The primary private open space areas of the proposal are located at the rear of the property.	Y
4A.4.6 Excavation		
C1 Buildings must not dominate or detract from the natural landform. The siting of buildings should relate to the	The proposed development is located on a site that is relatively flat and will therefore not involve extensive excavation.	Y

site's natural context and topographical features.		
4A.4.7 Vehicle Access		
<p>C1 Driveways within a property shall have a minimum width of 3 metres. Note: An additional clearance of 300mm is required (for each side) if the driveway is located adjacent to a solid structure (i.e. masonry wall).</p> <p>C2 The width of the vehicular crossing over the Council's road reserve shall be a minimum of 3 metres for a single garage and a maximum of 5.5 metres for a double garage at the property boundary and at 90° to the kerb.</p> <p>C3 Driveways must be designed to comply with AS2890.1 (also refer to Part 3A - Car Parking).</p> <p>C4 Vehicular crossings shall be sited so that existing street trees, bus stops, bus zones, power lines and other services are not affected.</p> <p>C6 The number of vehicle crossings is to be limited to one (1) per allotment.</p> <p>C7 Vehicular crossings shall be sited so as minimise any reduction in on-street kerb side parking.</p>	<p>The development proposes two driveways each 3m wide. The layout of the driveways has not provided any room for on-street car parking resulting in a reduction of one on-street car parking space. Additionally, the driveway layout has resulted in the removal of one street tree.</p> <p>The application was referred to Council's Development Engineer who does not support the proposed layout. The proposed car parking situation has been discussed in detail in Part 3A of the report.</p>	<p>No – Refer to Note 3 – Car Parking</p>
4A.4.8 Car Parking		
<p>C1 Development must comply with Part 3A - Car Parking.</p> <p>C4 Car parking structures must be located and designed to:</p> <p>(i) Comply with AS2890.1 and</p> <p>(ii) Conveniently and safely serve all users;</p> <p>(iii) Enable efficient use of car spaces, including adequate manoeuvrability for vehicles between the site and the street;</p> <p>(iv) Not dominate or detract from the appearance of the existing dwelling or new development and the streetscape;</p> <p>(v) Be compatible in scale, form,</p>	<p>Refer to <i>Note 3 Car Parking</i>.</p> <p>Refer to <i>Note 3 – Car Parking</i> as the proposed car parking scheme will result in the reduction on one on-street car parking space.</p>	<p>No – Refer to Note 3 – Car Parking</p> <p>No – Refer to Part 3A & Note 3 – Car Parking</p>

<p>materials and finishes with the associated dwelling;</p> <p>(vi) Not reduce availability of kerbside parking;</p> <p>(vii) Retain any significant trees; and</p> <p>(viii) Have minimal impact on existing fences and garden areas that contribute to the setting of the associated dwelling and the character of the streetscape.</p> <p>C8 In new development the garage/carport is to be setback 5.5 metres from the front boundary. This may be difficult for small allotments with a frontage of 12.5 metres or less. In these cases Council will consider whether or not to require a setback of 5.5 metres on merit – this merit based assessment will include whether or not the proposed garage will have a dominant impact on the streetscape.</p> <p>C9 Garages, parking structures (i.e. carports & car spaces) and driveways are not to dominate the street.</p>	<p>The garage is setback 6m from front boundary and is therefore compliant with this control.</p> <p>The proposed garages are not considered to dominate the street. Notwithstanding, the proposed driveways have a total width of 6m. In the case of Lot 12, the driveway accounts for more than 50% of the paved area in the front setback. Additionally, the layout of the driveway, being only 3m apart from each other limits the amount of landscaping that would otherwise minimise the bulk and scale of the development.</p>	<p>Y</p> <p>No – Refer to Part 3A and Note 3 – Car Parking</p>
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Note 3 – Car Parking

The development proposes two driveways each 3m wide. The proposal has not provided any room for on-street car parking resulting in a reduction of one on-street car parking space. Additionally, the driveway layout dominates the streetscape given the amount of paving required and has resulted in the removal of one street tree with reduced space for more landscaping. The application was referred to Council's Development Engineer who does not support the proposed layout.

There are two options for driveway layouts that is more appropriate than what is currently proposed. The first being, having the two driveways located on opposite ends of the frontages so as to accommodate a 5.6m space between them. The second option is to amalgamate the driveways into one 5.5m wide driveway. Both options retain the same amount of on-street parking currently available.

Notwithstanding, amalgamating the driveways in this instance is considered the more appropriate option as it does not require the relocation of services that are located in the south-east corner of the site and provides sufficient space for mature street trees and landscaping within the front setback. Additionally, consideration should be given to the development trend

of the street where it can be expected that similar subdivisions may be proposed. In this regard, amalgamating the driveways will result in fewer driveways intersecting the street as it continues to develop. This will allow for more space for street tree planting, will maximise on-street parking and will improve pedestrian and streetscape amenity.

Council requested the driveways to be amalgamated as part of the additional information letter in order to address the concerns raised above; the amended plans in response to the letter disregarded this request. In this regard, Council does not support the proposed driveway layout given the reduction in supply of on-street parking whilst simultaneously increasing density and therefore demand.

Note 4 – Building Setbacks

Zero lot lines on sites with a lot width less than 12.5m are to be assessed on merit depending on building type and open space provisions. The objectives for Part 4A.2.8 Building Setbacks area as follows:

O1. To ensure that the relationship between side and rear setbacks and building heights maintain the amenity of neighbouring residential sites.

As discussed in the Land and Environment Court (*Galea v Marrickville Council* [2005] NSWLEC 113) planning principle, to determine whether building on the boundary is appropriate, the following questions should be asked:

1. Is the street characterised by terrace housing?

The street is not characterised by terrace housing; the most prominent building typology is detached dwellings. One semi-detached dwelling is located at 23-25 Albert Street with a number of other examples present in the immediate locality.

2. What is the height and length of the wall on the boundary?

The northern boundary wall has a length of 6m and a height of 4.03m which includes a 1m high parapet.

3. Has the applicant control over the adjoining site(s) or the agreement of their owners?

The applicant has not provided Council with any evidence to show that they have control over the adjoining site(s) or the agreement of their owners.

4. What are the impacts on the amenity and/or development potential of adjoining sites?

The impacts on the amenity relate to the reduction in daylight able to be received as the boundary wall will impact the southern elevation of the neighbour to the north. The unnecessary height of the parapet further impacts on the amenity and adds to the bulk and scale of the development.

5. Are there arrangements in place for the maintenance of the wall or gutters?

Currently there are no arrangements in place for the maintenance of walls, gutters and downpipes to the adjoining properties.

Note 5 – Solar Access

Botany Bay Development Control Plan (DCP) 2013 states building are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on the 21 June to windows in living areas and to 50% of the primary private open space areas of both the subject site and adjoining properties as per Control 1.

Council may grant consent to a development that does not comply with the 2 hours of solar access requirement. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Sunlight Planning Principle as stated in Control 4 of the BBDCP 2013.

The subject allotment is east-west oriented with east being the rear of the property and west being the front of the property. The proposal will result in significant overshadowing impacts to the property to the south resulting in a non-compliance with Control 1. Therefore an assessment against the below planning principle established by the LEC has been carried out.

With respect to the Land and Environment Court planning principles on the impact on solar access of neighbours (*Parsonage v Ku-ring-gai* (2004) NSWLEC 347) and as amended by *The Benevolent Society v Waverly Council* is addressed as follows:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed). At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Comment: The subdivision pattern along the western side return of Albert Street is oriented east-west, with west being the rear boundary and east being the front boundary. The locality is in a low density area consisting predominantly of detached dwelling houses. Given the low density context, it can be expected that some of the existing sunlight will be retained. The proposed development complies with height and rear setback controls, however exceeds the maximum FSR allowed for the site. The neighbour directly to the south will be the most effected by the proposal and the impacts have been discussed in detail below.

Solar Access to southern neighbour (12b Hambly Street)

Living area windows (Ground floor rear window):

The neighbouring site to the south is oriented east-west with east being the front. The proposed living areas, consisting of a kitchen, dining and living room are located to the rear of the dwelling on the ground floor. The ground floor rear window servicing the living areas will be self-shadowed from 9am to approximately midday. However the shadow cast by the proposal will prevent any direct solar access to the ground floor rear window servicing the living areas on June 21. Whilst it is understood that there are some challenges in maintaining solar access to southern properties in east-west subdivision patterns, the proposal makes no attempt at addressing this.

Rear private open space:

In order to comply with the solar access requirements of the BBDCP 2013, the proposal must maintain a minimum of 2 hours of solar access to at least 50% of the private open space area. The shadow diagrams indicate that for June 21, substantially more than 50% of the private

open space will be overshadowed throughout the entire day. This outcome is not inevitable as a more appropriate and considerate design will enable compliance with this control. The exceedance in FSR is reflective of the unnecessary bulk and scale present in this proposal.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Comment: The proposal extends the rear building line approximately 3m further into site to what is currently existing. The length of the dwelling is considered to have the biggest impact on the southern neighbour as it prevents afternoon sun from adequately reaching the property.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Comment: As discussed above, the proposal is considered to have unnecessary bulk and scale which understandably has created overshadowing impacts. A more efficient use of internal space will seek to resolve this issue. This concern was raised with the applicant in an additional information letter requesting a reduction in FSR to minimise overshadowing impacts; the amended plans disregarded this request.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest proportions of the glazed area.*

Comment: The proposed development prevents the ground floor living area window at 12b Hambly Street from receiving the minimum direct solar access requirement of 2 hours for 21 June. The floor to ceiling living area window has a height of 2700mm and a width of 5900mm.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comment: Overshadowing by fences, roof overhangs and changes in level have been taken into consideration and in this case, has minimal impact.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as existing development.*

Comment: Indications of incremental change can be found in the street, mostly in the form of knock-down rebuilds. The property to the south, which is most effected by the proposal, has recently developed. Therefore, consideration to future development on that site is not applicable.

Part 8- Botany Character Precinct

The site is located within the R2 Low Density Residential Zone of the Botany Precinct on the western side of Albert Street between Morgan Street to the north and Hambly Street to the

south. Refer to the table below which addresses each point regarding the 'Desired Future Character' for Botany.

Control	Proposed	Complies
Function and Diversity <ul style="list-style-type: none"> Enhance the public domain and streetscapes within the Precinct. Development should: <ul style="list-style-type: none"> promote neighbourhood amenity and enhance pedestrian comfort; encourage site layout and building styles and designs that promote commonality and a visual relationship with the surrounding built form and dwelling styles; encourage dwelling styles that maintain and complement existing development patterns; encourage a strong landscape and vegetation theme within both the public and private domain; 	<p>The proposed driveway layout adversely impacts on the public domain and streetscape due to the excess amount of space used for driveways intersecting the street. Additionally, the driveway layout limits the amount of street tree planting and therefore reducing pedestrian comfort.</p>	No – Refer to Note 3 – Car Parking
Form, Massing, Scale and Streetscape <ul style="list-style-type: none"> Encourage development to follow the topography of the land. Maintain and enhance low density residential accommodation in the form of detached/attached dwellings with a maximum height of 2 storeys in the remainder of the Precinct. Promote site access and parking facilities that do not dominate the streetscape. Encourage new development or alterations and additions to existing development to complement the height and architectural style found in the immediate vicinity, particularly where there is an established character. Maintain roof forms to reflect the characteristics of the prevailing designs within the street. 	<p>The proposed hipped roof form is consistent with other roof forms found in the street which is predominantly made up of gable and hipped roof forms. In this regard, the proposed roof form and dwelling style is acceptable.</p> <p>Notwithstanding, the driveways are considered a dominate element within the streetscape and are not supported.</p>	No – Refer to Note 3 – Car Parking
Setbacks <ul style="list-style-type: none"> Retain front setbacks which are consistent within a street and promote landscaping to soften the built form. Retain side setbacks, where they are consistent within a street 	<p>The front setbacks are consistent within the street.</p> <p>The proposed side setbacks will not be consistent with the existing side setbacks of buildings along the street (0.9m).</p>	No – Refer to Note 4 Building Setbacks

Landscaping <ul style="list-style-type: none"> Encourage landscaping within the front and side setback to soften the built form particularly in high density terrace, unit and residential flat buildings. Promote landscaping in rear private open space areas to provide privacy to adjoining properties. Maintain street trees. 	Landscaping has been proposed within the front and rear setbacks. The existing mature tree in the rear yard is to be retained.	Y
Subdivision <ul style="list-style-type: none"> Retain and preserve the rectilinear grid pattern within the Precinct 	The proposed subdivision is considered to preserve the rectilinear grid within the Precinct by maintain site depth and shape.	Y
Solar Access <ul style="list-style-type: none"> Encourage buildings to maximise solar access to surrounding residential properties and to public and private open spaces. Preserve solar access to adjoining properties. 	The proposed development will not maximise solar access to surrounding residential properties. Solar access will be reduced significantly to the adjoining southern property at 12b Hambly Street.	No – Refer to Note 5 – Solar Access
Traffic and Access <ul style="list-style-type: none"> Encourage new development to have a minimal impact on traffic flow and demand for on street parking spaces. Encourage development to provide adequate on-site parking to assist in reducing traffic congestion on local road networks. 	The proposed driveway layout will result in a decrease in on street parking spaces and is therefore not supported.	No – Refer to Note 3 – Car Parking

As such the proposal is unsuitable for the site and inconsistent with the desired future character of the Botany Precinct pursuant to Botany Bay Development Control Plan, Part 8 – Character Precincts.

S.4.15(1)(a)(iv) - Provisions of regulations

The relevant provisions of the *Environmental Planning and Assessment Regulation 2000* have been considered in the assessment of the application. No concerns have been identified.

S.4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development have been outlined throughout the report. As such, the proposal is not supported.

S.4.15(1)(c) - Suitability of the site for the development

The site is located within a 20-25 ANEF contour and is affected by aircraft noise. An acoustic report has been providing addressing the requirement in the relevant Standards. There are no other site constraints affecting the suitability of the site for the development. In this regard, the

site is suitable for the type of development being proposed, however in its current form, the proposal cannot be supported.

S.4.15(1)(d) - Public Submissions

In accordance with Part 2 of the Botany Bay Development Control Plan 2013 – Notification and Advertising the development application was notified to surrounding property owners for a 14 day period from 10 May to 24 May 2019. One (1) submission was received and the specific concerns that were raised have been addressed below:

- **Subdivision**

Submitter's Comments: The proposed subdivision does not retain the subdivision pattern characteristics of the surrounding locality, these being the size and width of the lots are below the average when compared to the 10 properties on either side of the subject site.

Planner's Comment: An assessment of the proposed subdivision can be found in *Note 2 – Subdivision Pattern* of this report. The assessment concludes that the proposed subdivision pattern is appropriate for the site as it maintains the rectilinear grid as well as site depth found in the surrounding properties.

- **Solar Access**

Submitter's Comments: The proposed development will result in overshadowing impacts to 12b Hambly Street that will result in a non-compliance with Council's controls. Additionally, the non-compliance has not been addressed in the Statement of Environmental Effects.

Planner's Comment: An assessment of the overshadowing impacts can be found in *Note 5 – Solar Access* of this report. The assessment concludes that the proposed development does not afford appropriate levels of solar access to the southern property and is not supported.

- **Floor Space Ratio**

Submitter's Comments: The proposed variation to the Floor Space Ratio development standard is considered excessive and will result in unnecessary bulk and scale impacts.

Planner's Comment: The proposed variation to the FSR development standard has been assessed in *Note 1 - Clause 4.6 variation to development standard* which does not consider the written request put forth by the applicant to adequately justify the variation.

The proposed issues raised within the submissions have been assessed in more detail within the relevant sections in the report above. Council agrees with the concerns relating to solar access and FSR.

S.4.15(1)(e) - Public interest

Granting approval to the proposed development is considered to have adverse impacts on the public interest by detracting from the streetscape and the functionality and safety of the public domain specifically in relation to removing one public on-street parking space.

Section 7.11 Contributions

The following Section 7.11 Contributions would need to be paid at the following rates should approval be granted.

Community Facilities:	\$ 1,637.16
Recreation and Open Space:	\$ 16,890.83
Transport Facilities:	\$ 1,326.38
Administration:	\$ 145.62
 Total in 2018/19:	 \$ 20,000.00

Conclusion

Development Application No. 2019/143 was lodged on 1 May 2019 seeking consent for the demolition of existing structures, Torrens Title subdivision into two (2) lots and the construction of two (2) semi-detached dwellings at 24 Albert Street, Botany.

The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act*. The non-compliances as listed above relating to the BBLEP 2013 and the BBDCP 2013 have not been adequately addressed and it is considered that the proposed development is not suitable for this site. The applicant seeks to vary the FSR development standard which has resulted in excessive bulk and scale imposing significant overshadowing impacts to the property to the south. Furthermore, the proposed driveway layout is not suitable and unnecessarily removes one on-street car parking space. Further non-compliances are present in the proposed stormwater system, side setback and streetscape presentation. As such, the proposed development is not consistent with the Desired Future Character of the Botany Precinct.

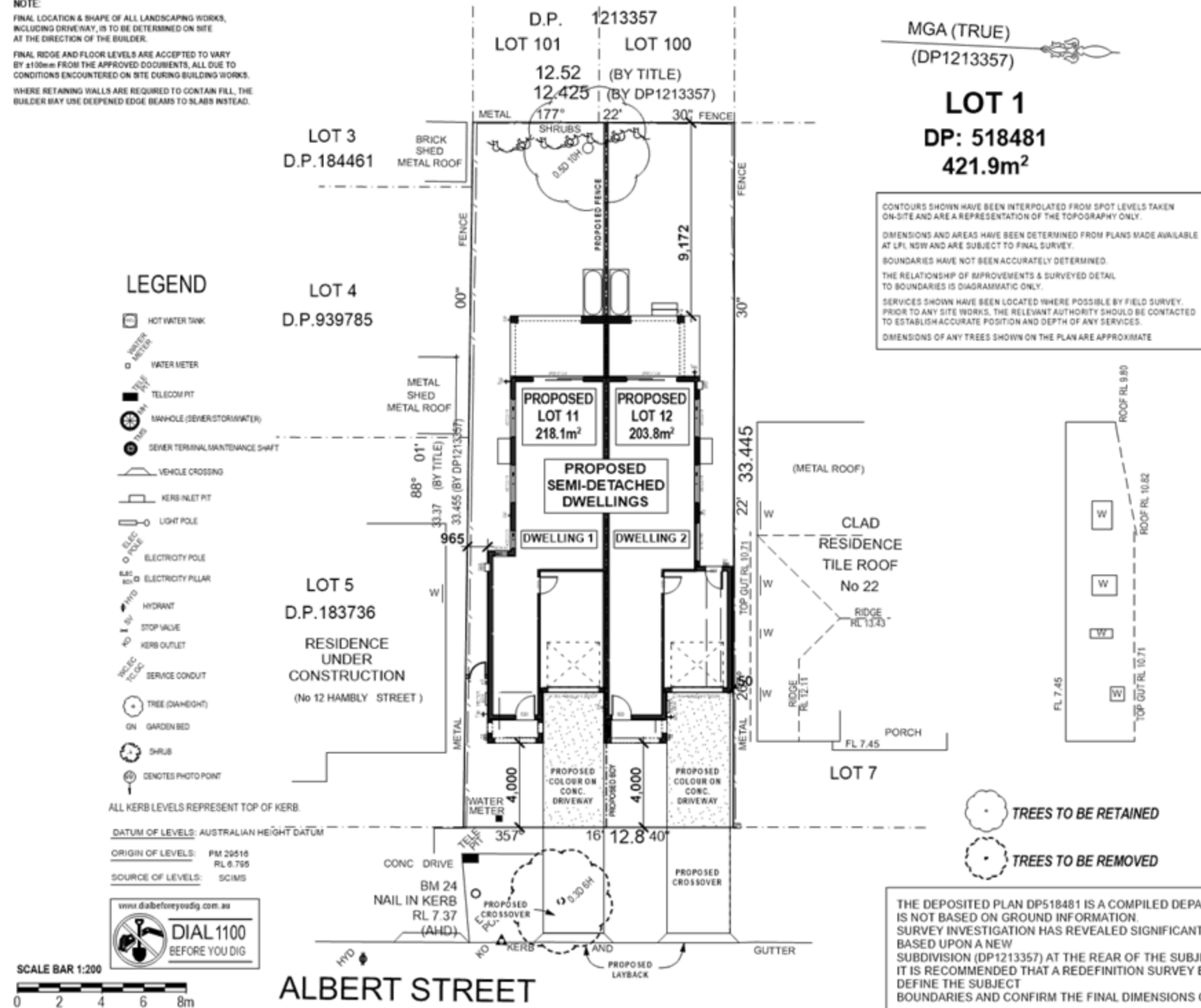
The development application has received one (1) submission which raised concerns relating to subdivision pattern, overshadowing and FSR. The issues raised as part of this application have been addressed throughout the report. Therefore the proposed development is recommended for refusal subject to the reasons of refusal in the attached schedule.

NOTE:

FINAL LOCATION & SHAPE OF ALL LANDSCAPING WORKS, INCLUDING DRIVEWAY, IS TO BE DETERMINED ON SITE AT THE DIRECTION OF THE BUILDER.

FINAL RIDGE AND FLOOR LEVELS ARE ACCEPTED TO VARY BY $\pm 100\text{mm}$ FROM THE APPROVED DOCUMENTS, ALL DUE TO CONDITIONS ENCOUNTERED ON SITE DURING BUILDING WORKS.

WHERE RETAINING WALLS ARE REQUIRED TO CONTAIN FILL, THE BUILDER MAY USE DEEPENED EDGE BEAMS TO SLABS INSTEAD.



MGA (TRUE)
(DP1213357)

LOT 1
DP: 518481
421.9m²

CONTOURS SHOWN HAVE BEEN INTERPOLATED FROM SPOT LEVELS TAKEN ON-SITE AND ARE A REPRESENTATION OF THE TOPOGRAPHY ONLY.

DIMENSIONS AND AREAS HAVE BEEN DETERMINED FROM PLANS MADE AVAILABLE AT LPL NSW AND ARE SUBJECT TO FINAL SURVEY.

BOUNDARIES HAVE NOT BEEN ACCURATELY DETERMINED. THE RELATIONSHIP OF IMPROVEMENTS & SURVEYED DETAIL TO BOUNDARIES IS DIAGRAMMATIC ONLY.

SERVICES SHOWN HAVE BEEN LOCATED WHERE POSSIBLE BY FIELD SURVEY. PRIOR TO ANY SITE WORKS, THE RELEVANT AUTHORITY SHOULD BE CONTACTED TO ESTABLISH ACCURATE POSITION AND DEPTH OF ANY SERVICES.

DIMENSIONS OF ANY TREES SHOWN ON THE PLAN ARE APPROXIMATE

Proposed Site Plan

SCALE 1:200

LOCATION PLAN

UBD REF: 276, D11
LAT: -33.946075
LONG: 151.205799



STORMWATER NOTE:

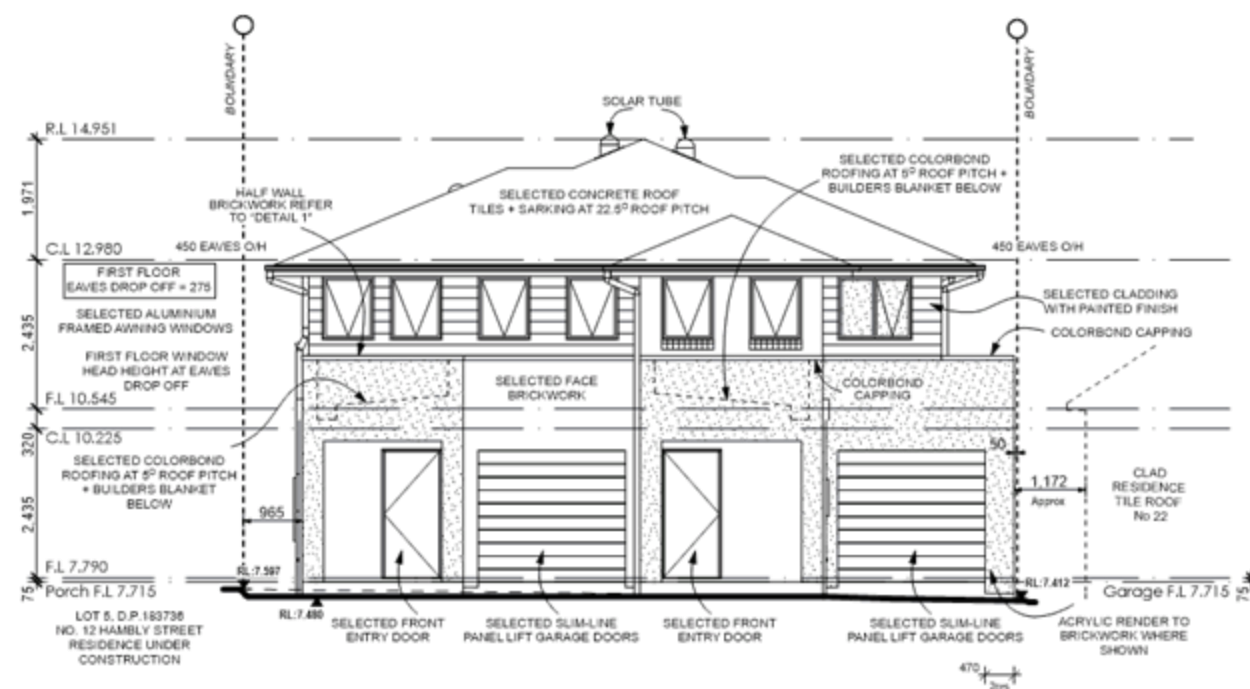
STORMWATER AS PER HYDRAULICS ENGINEER'S PLANS AND BASIX REQUIREMENTS ALL IN ACCORDANCE WITH AUSTRALIAN STANDARD 3500.3



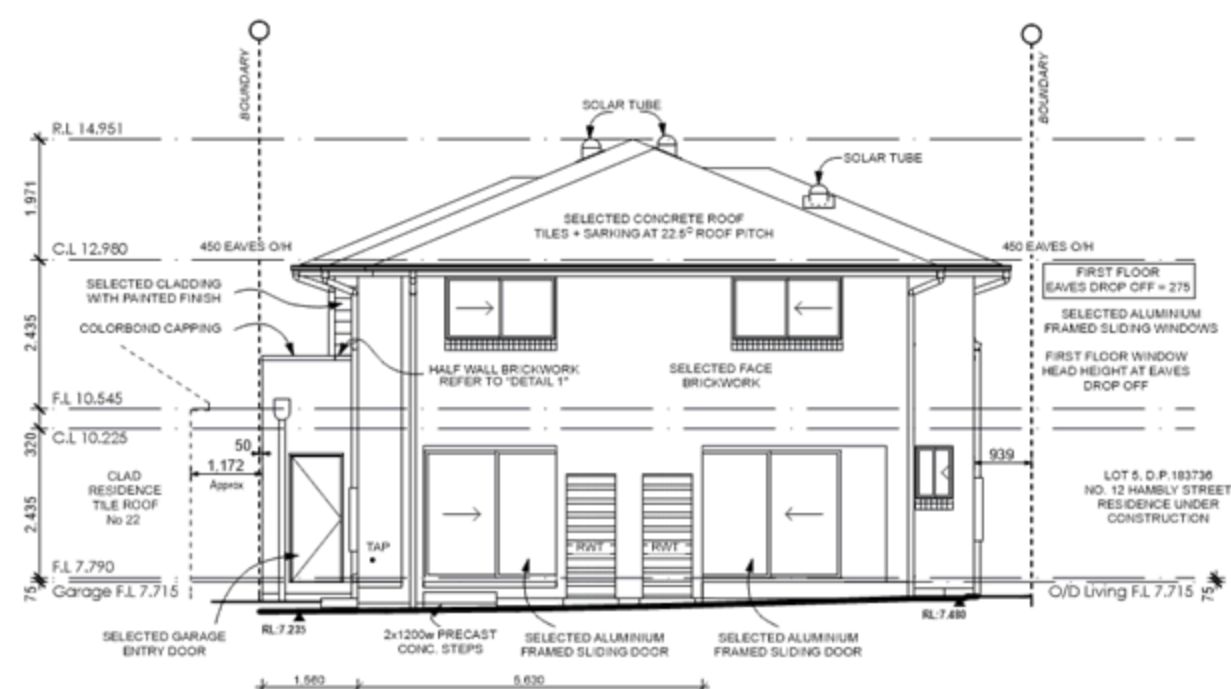
THE DEPOSITED PLAN DP518481 IS A COMPILED DEPARTMENTAL PLAN DRAFTED IN THE LAND TITLES OFFICE AT THE TIME AND IS NOT BASED ON GROUND INFORMATION. SURVEY INVESTIGATION HAS REVEALED SIGNIFICANT DISCREPANCIES IN THE BOUNDARY DIMENSIONS OF THE PROPERTY BASED UPON A NEW SUBDIVISION (DP1213357) AT THE REAR OF THE SUBJECT PROPERTY. IT IS RECOMMENDED THAT A REDEFINITION SURVEY BE CARRIED OUT PRIOR TO FINAL DESIGN & CONSTRUCTION TO FULLY DEFINE THE SUBJECT BOUNDARIES AND CONFIRM THE FINAL DIMENSIONS OF THE PROPERTY.

Plot Date: Monday, 24 June 2019

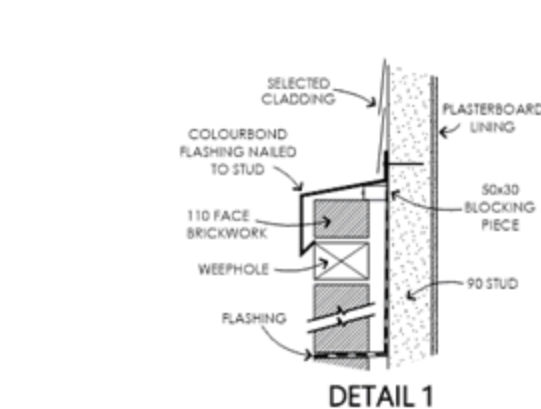
<div><div><div>CHAMPION HOMES</div><div>Suite 1, Level 1 600 Hoxton Park Road, Hoxton Park NSW 2171 Telephone: (02) 9825 8000 Fax: (02) 9825 8110 www.championhomes.com.au Builders Licence No. 92732C</div></div></div>	<div>NOT FOR CONSTRUCTION</div>	<div>Soil Classification:</div> <div>TBC</div>				<div>Copyright. ©</div> <div>This plan is the property of Champion Homes and may not be used in whole or part.</div> <div>Legal action will be taken against any person who infringes the copyright.</div>	<div>Proposed: Land Subdivision & Semi-Detached Dwellings</div>	<div>Client : John O'Rourke & Jean O'Rourke</div>		
		<div>Slab Classification:</div> <div>TBC</div>					<div>LGA: Bayside Council</div>	<div>Date: 13.12.18</div>		
		<div>Wind Speed Class:</div> <div>TBC</div>	<div>D13.06.19COUNCIL LETTER - MT</div>	<div>C18.03.19BASIX INFO ADDED & DA PLANS - AW</div>	<div>B07.02.19CLIENT AMENDMENTS - SI</div>		<div>A13.12.18CONTRACT DRAWINGS - AW</div>	<div>Design : Custom Design</div>		
			<div>Rev</div>	<div>Date</div>	<div>Amendment</div>		<div>Lot:1 DP:518481</div>	<div>No.24 Albert Street</div>		
							<div>Botany, NSW 2019</div>	<div>Job No: 4052N</div>	<div>Sheet Size: A3</div>	<div>Sheet No: 2 of 15</div>



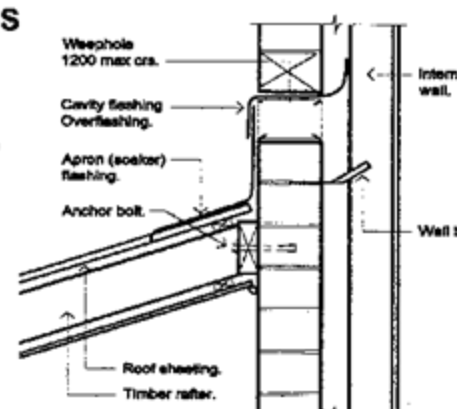
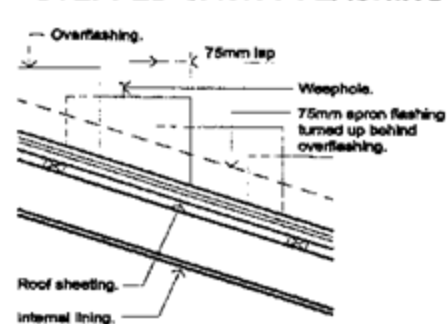
Eastern Elevation
SCALE 1:100



Western Elevation
SCALE 1:100



STEPPED CAVITY FLASHINGS

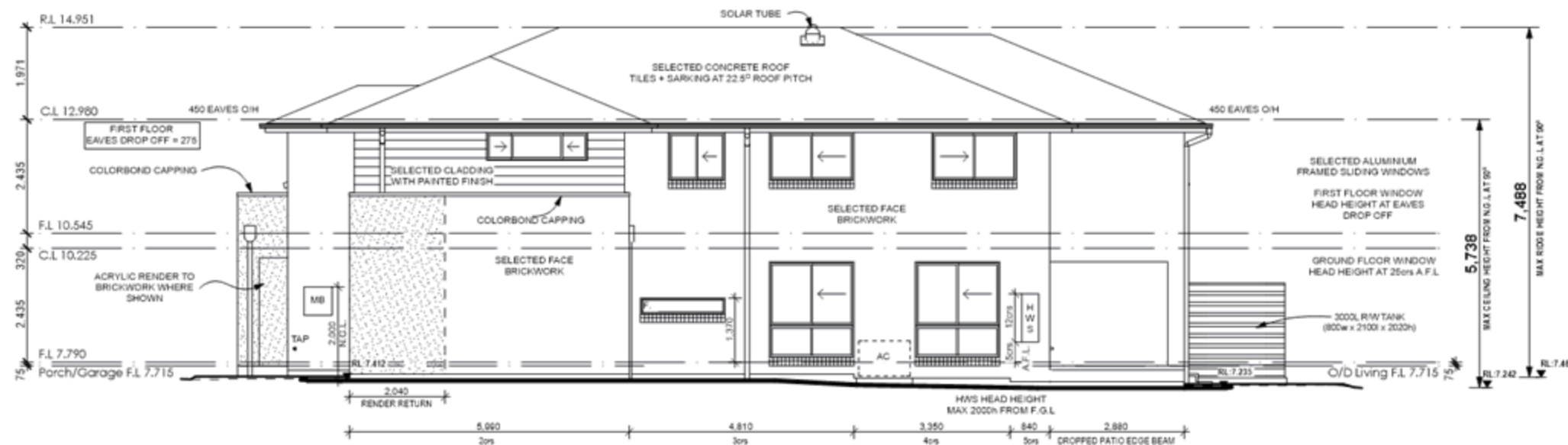


SARKING REQUIREMENTS FOR PROPOSED ROOF TO BE AS PER TABLE 3.5.1.1(a) and TABLE 3.5.1.1(b) AS SET OUT IN THE BUILDING CODE OF AUSTRALIA.

PROTECTION OF OPENABLE WINDOWS AS PER B.C.A CONDITION 3.9.2.5
A WINDOW OPENING MUST BE PROVIDED WITH PROTECTION IF THE FLOOR BELOW THE WINDOW IN A BEDROOM IS 2m OR MORE ABOVE THE SURFACE BENEATH. WHERE THE LOWEST LEVEL OF A WINDOW OPENING IS LESS THAN 1.7m ABOVE THE FLOOR, A KEYED LOCK MUST BE FITTED SO AS TO RESTRICT THE WINDOW OPENING TO A MAX 125mm

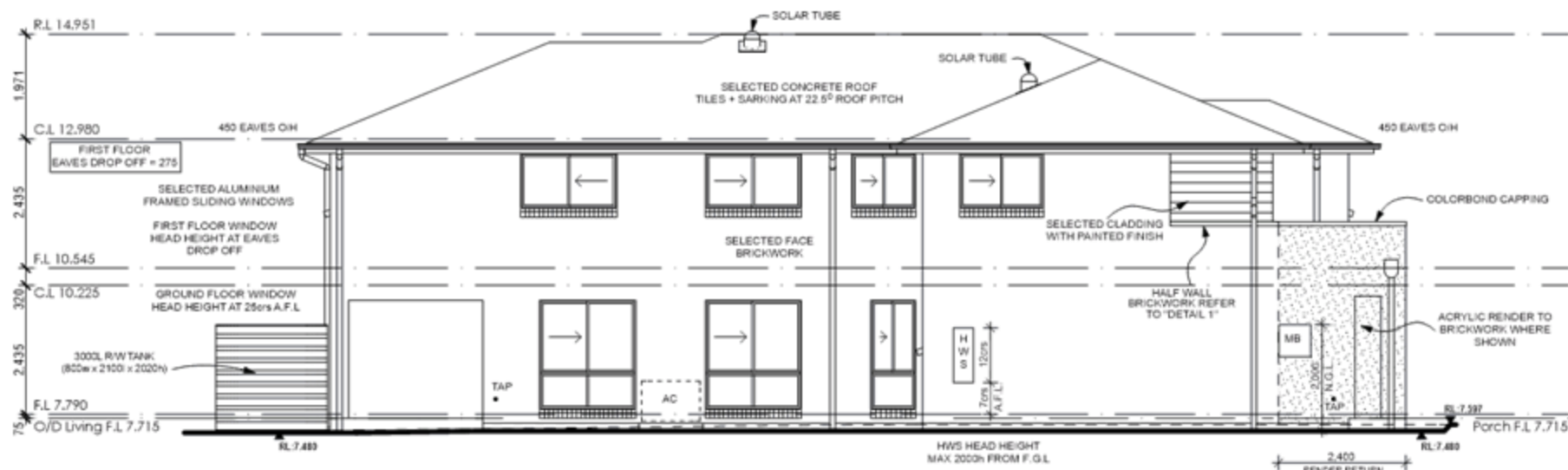
SCALE BAR 1:100
0 1,000 2,000 3,000 4,000mm
Figured dimensions to be used in preference to scaling this drawing.
Do not assume - if in doubt ASK.

 CHAMPION HOMES Suite 1, Level 1 600 Hoxton Park Road, Hoxton Park NSW 2171 Telephone: (02) 9825 8000 Fax: (02) 9825 8110 www.championhomes.com.au Builders Licence No. 92732C	NOT FOR CONSTRUCTION	Soil Classification:	TBC	Copyright. © This plan is the property of Champion Homes and may not be used in whole or part. Legal action will be taken against any person who infringes the copyright.	Proposed: Land Subdivision & Semi-Detached Dwellings Lot:1 DP:518481 No.24 Albert Street Botany, NSW 2019	Client : John O'Rourke & Jean O'Rourke			
		Slab Classification:	TBC			LGA:	Bayside Council	Date:	13.12.18
		Wind Speed Class:	TBC			Design :Custom Design			
		Job No: 4052N				Sheet Size: A3	Sheet No: 11 of 15		
		Rev	Date	Amendment					
		D	13.06.19	COUNCIL LETTER - MT					
		C	18.03.19	BASIC INFO ADDED & DA PLANS - AW					
		B	07.02.19	CLIENT AMENDMENTS - SI					
		A	13.12.18	CONTRACT DRAWINGS - AW					



Northern Elevation

SCALE 1:100



Southern Elevation

SCALE 1:100



Figured dimensions to be used in preference to scaling this drawing.
Do not assume - if in doubt ASK.

**SARKING REQUIREMENTS FOR PROPOSED ROOF
TO BE AS PER TABLE 3.5.1.1(a) and TABLE 3.5.1.1(b)
AS SET OUT IN THE BUILDING CODE OF AUSTRALIA.**

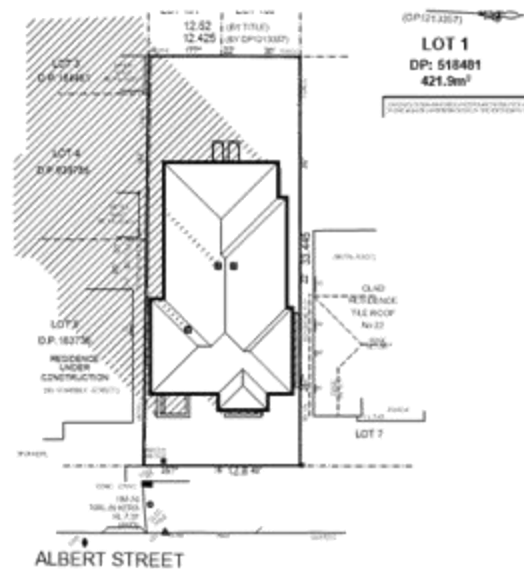
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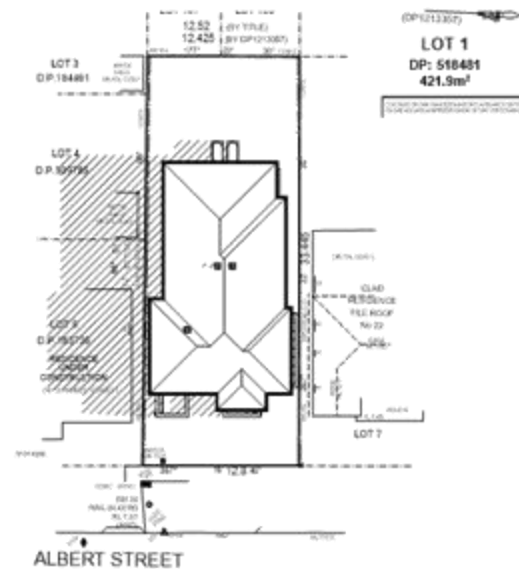
Plot Date: Monday, 24 June 2019

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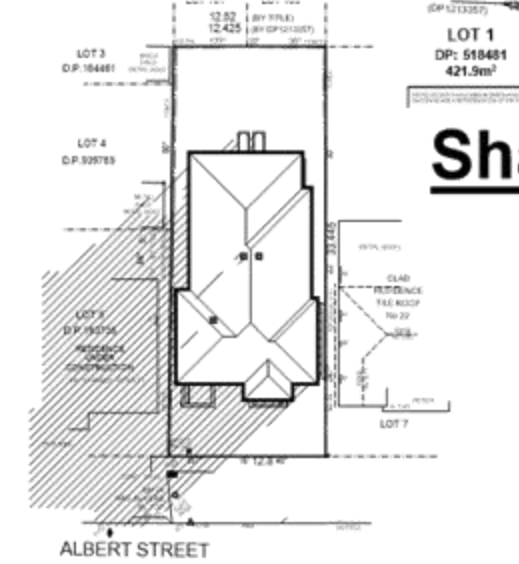




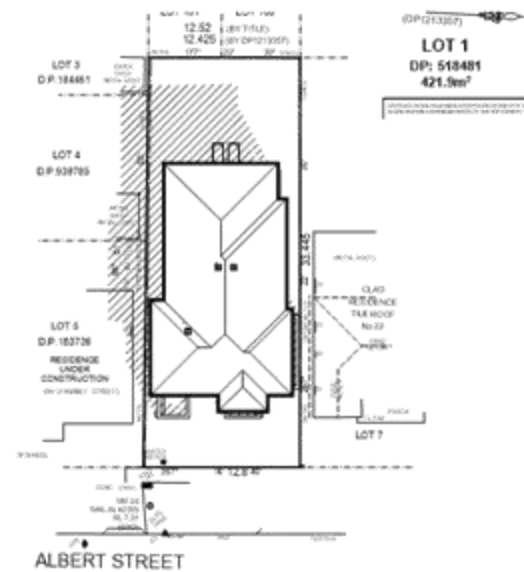
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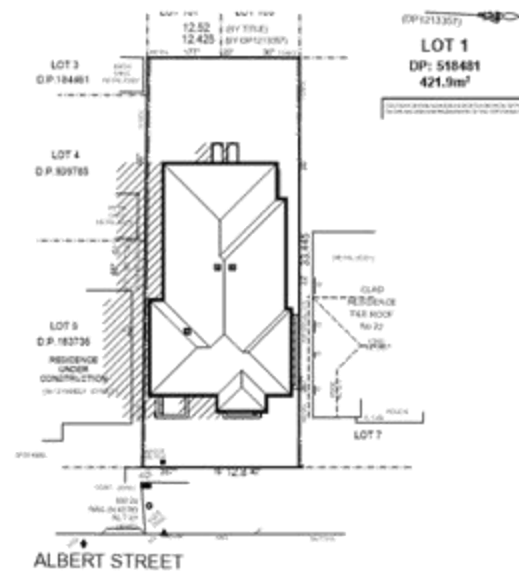
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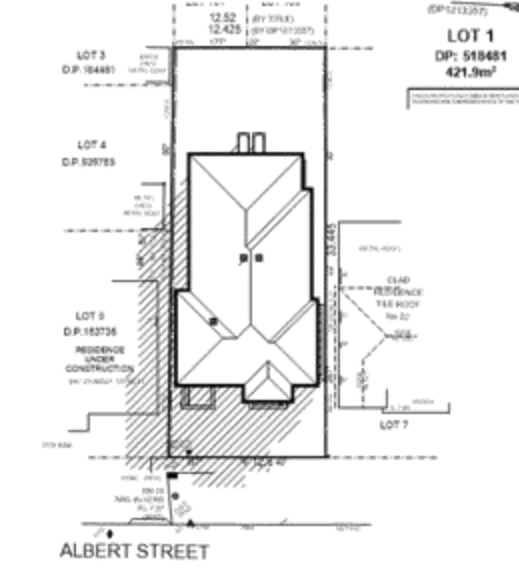
June 22nd - 3pm
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Equinox - 9am
SCALE 1:500



Equinox - 12noon
SCALE 1:500



Equinox - 3pm
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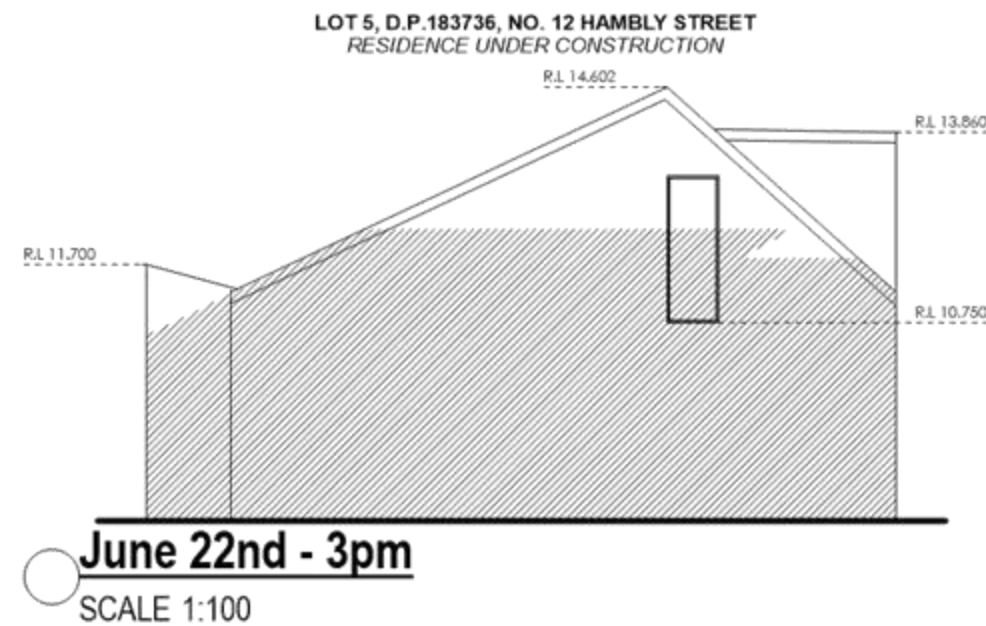
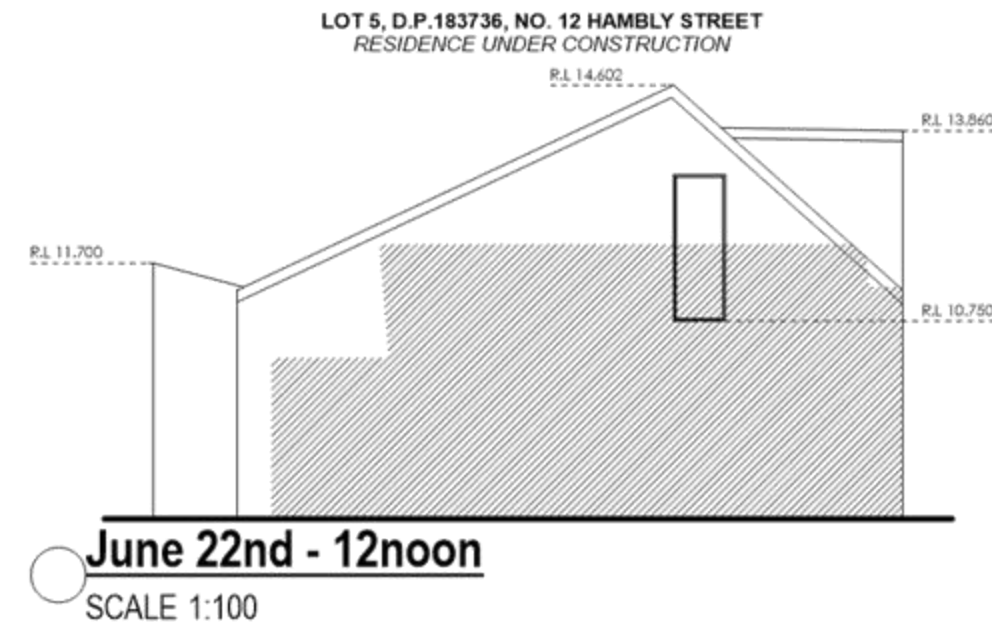
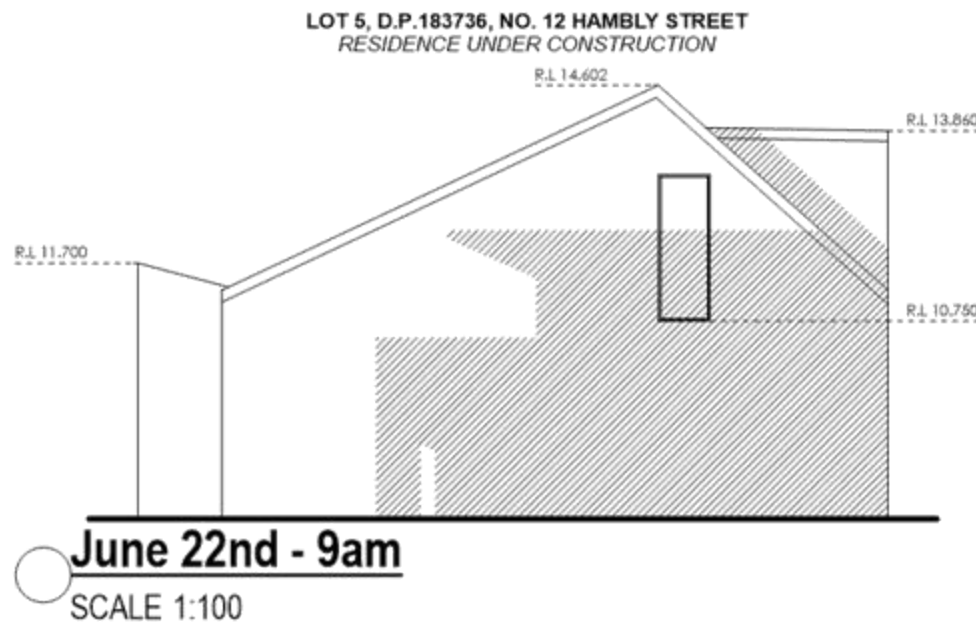


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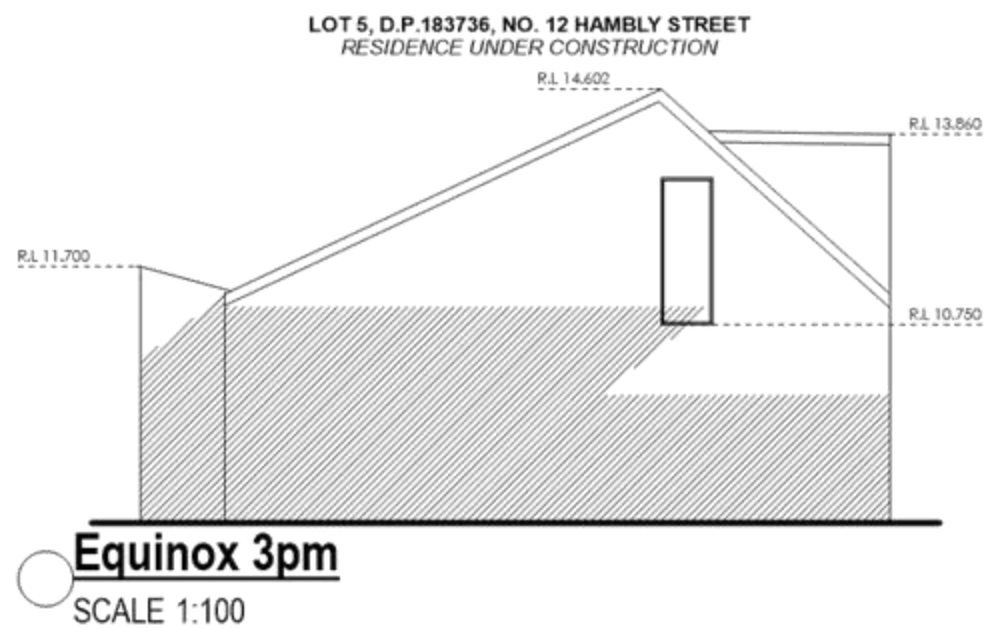
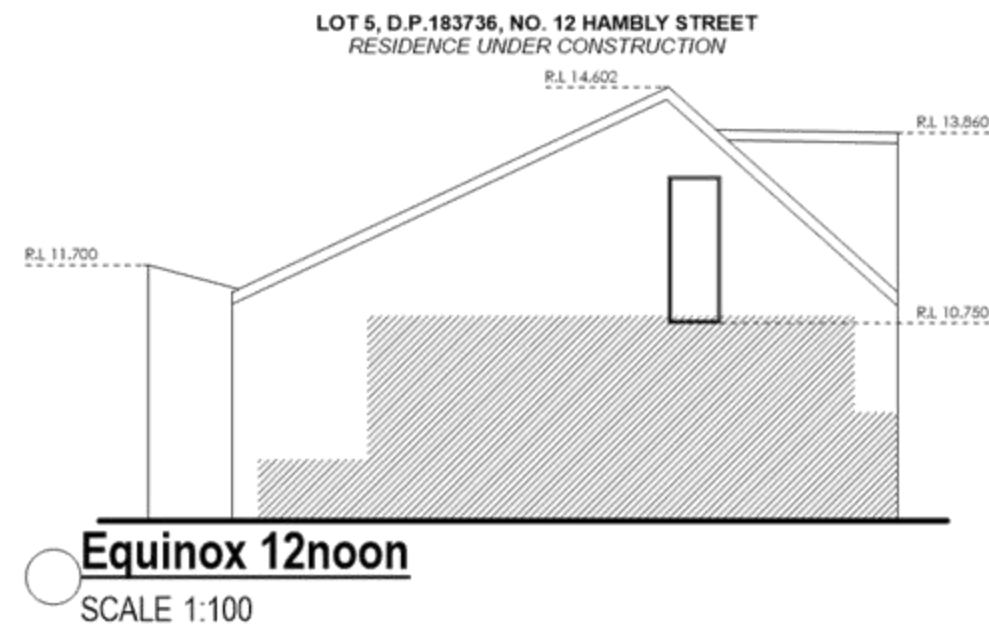
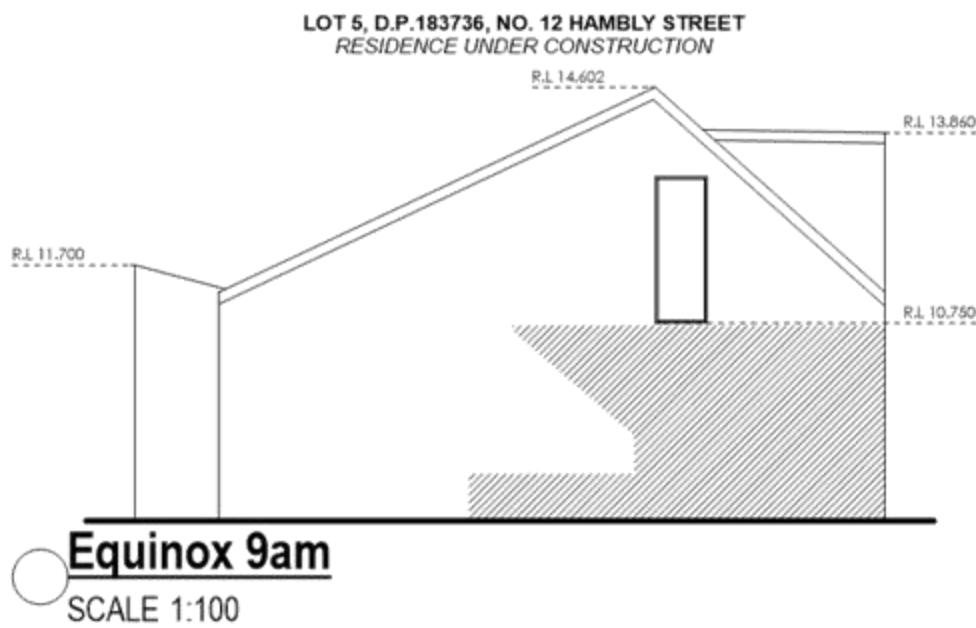
Shadow Diagrams



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Shadow Diagrams



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LANDSCAPE SPECIFICATION

1. SITE PREPARATION

Any minor leveling, either cutting or filling, shall be undertaken by the Landscape Contractor so that areas are left ready for final finishes. Adequate watering points shall be provided to enable the Landscape Contractor to maintain planted area throughout construction and the maintenance period. Weeds are to be sprayed with 'Roundup' or equal, to manufacturer's directions and must be dead before being disturbed.

2. WORKS BY OTHERS

The following works shall be undertaken by others prior to the commencement of the landscape works:

- All trees to be removed
- Tree protection fencing
- Stripping & stockpiling site topsoil
- Erosion control measures and siltation fences / devices

3. DRAINAGE WORKS

In general the mass planted areas are to be built atop existing levels to improve drainage and to deflect water runoff around the site. If the contractor considers that certain other areas require drainage then the superintendent should be immediately notified for an inspection. Set out below are the requirements for any drainage works.

3.1 Materials:

Agricultural drains to be 100mm flexible coil & filter sock.
Aggregate to be 10-20mm blue metal.
Connections to be 100mm black polyethylene stormwater pipe.

3.2 Installation:

Install agricultural drains with a maximum 1:50 gradient and backfill trenches with a minimum 200mm layer of aggregate. Connect into the stormwater system for the buildings.

4. TIMBER EDGING

4.1 Materials:

Edging to be 100 x 38mm F7 rougher header H4 treated pine.
Tanalith E treatment - chromium and arsenic free timber treatment that uses copper and an organic azole co-biocide as active ingredients.
Pegs to be 25 x 25 x 450mm long hardwood.
Nails to be galvanneal timberlock twist nails - 50mm x 3.75mm

4.2 Installation:

Install edging to finish flush with adjoining grass levels and secure with pegs spaced at maximum 1.2 metre intervals placed on the garden side of the edging. Pegs to be fixed to edging with 2 off nails. Top of pegs to be 25mm below top of edging. All exposed edges of timber to be bevelled to prevent future splinters.

5. PEBBLE MULCH

5.1 Materials:

Pebbles for the access paths to be 10-20mm Nepean river pebbles.

5.2 Installation:

Following earthworks rake all path areas and tamp lightly to give an even graded surface. Care shall be taken not to mix soil and pebble together. Pebbles to be laid to a depth of 100mm. Refer elsewhere for brick and timber garden edging.

6. MASS PLANTING

6.1 Materials:

Soil mix to be suitable for improving depleted soils such as Botany Humus Mix from Australian Native Landscapes or equal. Samples to be shown to Principals and Representative for approval before installation. Also provide written breakdown of contents, pH and trace elements and suitability for improving existing soil. Soil mix to comply with AS 3743-2003: Potting mixes, AS 4419-2003: Soils for landscaping and garden use & AS 4454-2003: Composts, soil conditioners and mulches.
Water crystals to be Garden King Wettasol Granular deep watering agent form Amgrow or equal product.

Trees and plants shall be true to name and variety. Substitutes in size or variety shall not be made without the approval of the Principals Representative. Also refer to Plant Schedule. All plants shall be true to size in well developed healthy condition, free from insects and diseases, with well established root systems. Sample of each species to be shown to Principals Representative for approval before installation.

6.2 Installation:

- Preparation of base levels by builder
- After construction of the buildings apply additional gypsum at 200g/m² to the lower section of the site (if clay encountered)
- Deep rip area below mass planted areas to a depth of 300mm
- Place 300mm layer of imported soil mix to all garden areas
- Apply 100g/m² of a complete native plant food to all garden areas
- Work fertiliser in with a rake and leave for one week prior to planting

Planting shall not be carried out in dry soil or in extreme weather conditions. The root systems must be moist before planting to ensure fertility. The plants shall be removed from their containers with as little disturbance as possible to the root system. Plants should be planted at the same depth as the plants were in the containers and allow for a shallow saucer of soil to be formed around the plant to aid penetration of water.

Avoid hilling up of top soil around young plant stems. Firm soil around the root ball and thoroughly soak the areas after planting. On completion, cultivate, rake and leave all garden areas in a neat and tidy condition. Remove old containers and plant labels from the site.

Fertilise with an approved nine months formulation general purpose slow release fertiliser such as 'Nutricote' or 'Osmocote' that is mixed into the prepared planting space just prior to planting. Fertiliser is to be applied at the rate as specified by the manufacturer for the plant size and type. Maintain all plants and trees and provide adequate watering for the duration of the contract.

Staking - Trees as indicated in the Schedule are to be staked with four 50 x 50mm x 1800mm long hardwood stakes secured in each corner of a 1000 x 1000mm square.

7. GARDEN MULCH

7.1 Materials:

Mulch to be comprised of maximum 25mm fresh hardwood chips such as Eucalyptus Mulch from Australian Native Landscapes or equal. Samples to be shown to Superintendent for approval before installation. Mulch to comply with AS 4454-2003: Composts, soil conditioners and mulches.

7.2 Installation:

Following planting, rake all garden areas and tamp lightly to give an even graded surface. Spread 75mm layer of mulch over the surface of all garden beds and cove down to finish flush with tops of pavements and garden edging. Care shall be taken not to mix soil and mulch together.

8. NEW LAWN AREAS

8.1 Materials:

Turf shall be cultivated 'Greenless Park' Couch obtained from an approved commercial grower. It shall be weed and disease free.

Topsoil to be a turf topdressing with a high performance turf top-dressing such as Nitro-Top from Australian Native Landscapes or equal. Samples to be shown to Superintendent for approval before installation. Also provide written breakdown of contents, pH and trace elements and suitability for improving existing soil.

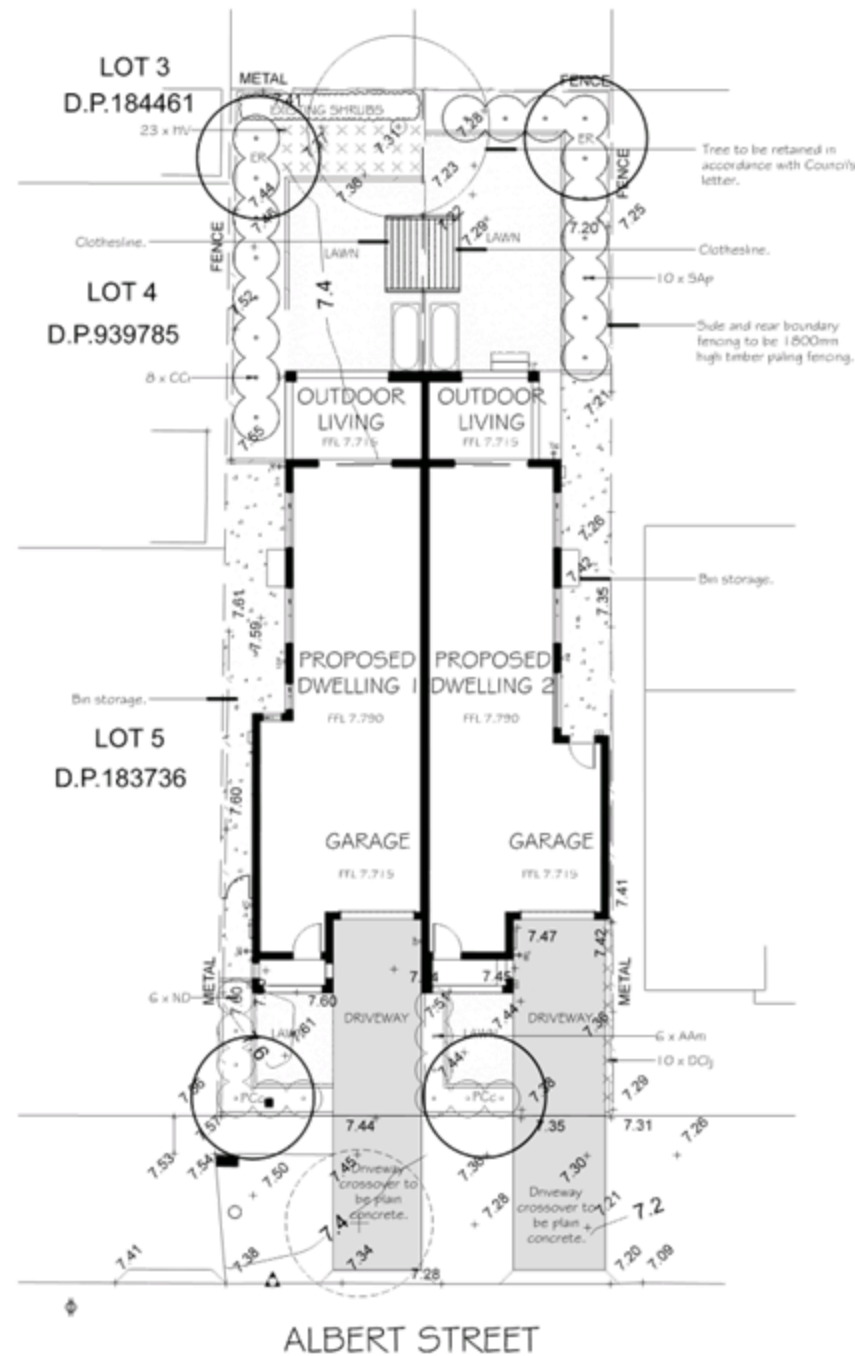
Topsoil to comply with AS 4419-2003: Soils for landscaping and garden use.

8.2 Installation:

- Preparation of base levels by builder
 - After construction of the buildings apply additional gypsum at 200g/m² to the lower section of the site
 - Deep rip area below lawn areas to a depth of 300mm
 - Place 100mm layer of imported topsoil mix to all garden areas
- Level and lightly compact topsoil to ensure a smooth surface. Prior to final raking add fertiliser such as Dynamic Lifter to manufacturer's directions. Turf to finish flush with adjoining pavements and edgings. Topdress edges or low areas to ensure even surface.

SCHEDULE OF PLANT MATERIAL

CODE	BOTANICAL NAME	COMMON NAME	QUANTITY	MATURE HEIGHT	CONTAINER SIZE	STAKES
AAm	Acmena smithii 'Alynn Magic'	Dwarf Lili Pili	6	0.9m	300mm	-
CCi	Callistemon citrinus	Bottlebrush	8	2.5m	200mm	-
DCi	Dianella caerulea 'Little Jess'	Little Jess Dianella	10	0.4m	140mm	-
ER	Elaeocarpus reticulatus	Blueberry Ash	2	6m	25 litre	2
HV	Hardenbergia violacea	Native Sarsparilla	23	prostrate	140mm	-
ND	Nandina domestica	Nandina	6	2m	200mm	-
PCe	Pyrus calleryana 'Capital'	Ornamental Pear	2	8m	45 litre	2
SAP	Syzygium australe 'Pinnacle'	Dwarf Lili Pili	10	3m	200mm	-



BASIX CALCULATIONS

RESIDENCE 1 GARDEN AREAS AREA

Lawn	32.36m ²
Low Water Use Planting	42.03m ²
Lawn/LWUP Total	74.39m ² (min 95m ² from BASIX)
Permeable pebble mulch	24.34m ²
Total	98.73m ² (=45.27%)

RESIDENCE 2 GARDEN AREAS AREA

Lawn	37.43m ²
Low Water Use Planting	26.04m ²
Lawn/LWUP Total	63.47m ² (min 76m ² from BASIX)
Permeable pebble mulch	18.46m ²
Total	81.93m ² (=40.20%)

LEGEND

- CONTOURS
- EXISTING & ARCHITECTS LEVELS
- PROPOSED LANDSCAPE LEVELS
- EXISTING TREES TO BE RETAINED
- NEW TURF AREAS
- GRAVEL PATHS
- TIMBER GARDEN EDGING
- 1800mm HIGH TIMBER PALING FENCE

REVISIONS

13.06.19

- Minor revisions to suit revised architectural plans and Council's letter.

BOTANY BAY REQUIREMENTS: PROPOSED LOT 11	BOTANY BAY REQUIREMENTS: PROPOSED LOT 12
PROPOSED SITE AREA: 275.5m ²	PROPOSED SITE AREA: 275.5m ²
FLOOR SPACE BAYD: ALLOWED: 5.91 (100.00m ²) ACHIEVED: 5.91 (100.00m ²)	FLOOR SPACE BAYD: ALLOWED: 5.91 (101.18m ²) ACHIEVED: 5.91 (101.18m ²)
USE: SOIL CONFORMANCE	USE: SOIL CONFORMANCE
SITE COVERAGE: ALLOWED: 30% (82.65m ²) ACHIEVED: 30% (82.65m ²)	SITE COVERAGE: ALLOWED: 30% (82.65m ²) ACHIEVED: 30% (82.65m ²)
PRIVATE OPEN SPACE: 10.0m ² min	PRIVATE OPEN SPACE: 10.0m ² min
REQUIRED: 20m ² ACHIEVED: 17.5m ²	REQUIRED: 20m ² ACHIEVED: 17.5m ²
LANDSCAPING: REQUIRED: 15% (41.33m ²) ACHIEVED: 30% (82.65m ²)	LANDSCAPING: REQUIRED: 15% (41.33m ²) ACHIEVED: 30% (82.65m ²)
PAVING SPACE: REQUIRED: 1.0m ² ACHIEVED: 1.0m ²	PAVING SPACE: REQUIRED: 1.0m ² ACHIEVED: 1.0m ²

NOTES

This plan is to be read in conjunction with all documentation prepared by Champion Homes.

Job no. 4052N

iScape
LANDSCAPE ARCHITECTURE

office, 16/303 pacific highway
lindfield nsw 2070
postal, 25 bent street
lindfield nsw 2070
ph 9416 4290 fax 9416 4735
A.C.N 097 328 580
email ija@netspace.net.au

project

Proposed Residence

Lot 1, No. 24 Albert Street,
Botany

drawing

Landscape Plan

client

John O'Rourke & Jean O'Rourke

date

June 2019

job.dwg no.

23.19/057A'

designed by

IJ

drawn by

AM

scale

1:100 @ A1

no. in set

ONE/ONE

ATTACHMENT 1

CLAUSE 4.6 VARIATION REQUEST

Property:	24 Albert Street, Botany
Date:	4/03/2019
Planning Instrument:	Botany Local Environmental Plan 2013
Development Standard:	Maximum Floor Space Ratio [Clause 4.4(2)]

Clause 4.6 of the Botany LEP 2013 states:

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone RS Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone RS Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.
- (8) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (9) This clause does not allow development consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (b1) clause 4.3 (2A),
 - (b2) clause 4.4B (3),
 - (c) clause 5.4.

Note: recent judicial guidance on how variations under Clause 4.6 should be assessed have also been taken into account in this written request.

The NSW Department of Planning and Environment guide to varying development standards provides a form with questions that assist in the assessment and determination of applications, viz:

1. **What is the name of the environmental planning instrument that applies to the land?** – Botany Bay Local Environmental Plan 2013.
2. **What is the zoning of the land?** – R2 Low Density Residential Zone.
3. **What are the Objectives of the zone?** – the objectives of the zone are:
 - *To provide for the housing needs of the community within a low density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To encourage development that promotes walking and cycling.*

The proposed development satisfies the above objectives as follows:

- The proposed scale of development (i.e., semi-detached dwellings to replace the existing aging dwelling house) will meet the housing needs of the community and add to the range of housing within the low density residential zone.
- Consideration has been given to the existing amenity and character of the area and it is considered that the proposed development is sympathetic and harmonious with nearby development in the Botany locality and will complement the existing character.
- The proposed development will enhance the amenity of the residential area by the provision of new housing stock and landscaping.
- Public transport is available within walking distance.

It is considered that the proposed development is skilfully designed to achieve a **better environmental outcome** in terms of **visual bulk and scale** and in achieving a **high level of privacy** to occupants of adjoining properties (i.e., the proposal involves both horizontal and vertical articulation and the effective use of colours and textures to create a **base** element, light weight **middle** section and hipped roof as a **top** element). It is, therefore, within the environmental capacity of the R2 Low Density Residential zone.

Note: the Court in relation to "zone objectives" has interpreted to mean "compatible" or "capable of existing together in harmony" (*Dem Gillespies v Warringah Council* [2002] NSWLEC 224; (2002) 124 LGERA 147; *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC 190) or "not being antipathetic" (*Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGERA 21).

4. **What is the development standard being varied?** – the standard being varied relates to Floor Space Ratio.
5. **Under what clause is the development standard listed in the environmental planning instrument?** – Clause 4.4A(3)(d)

6. What are the objectives of the development standard? – the objectives of the development standard are:

- (a) to ensure that the bulk and scale of development is compatible with the character of the locality,
- (b) to promote good residential amenity.

In summary, the underlying purpose of the maximum floor space ratio requirement is to ensure that:

1. New housing is of a comparable bulk and scale to existing development in the zone.
2. There is a good balance between landscaping and the siting of the building (i.e., strategically positioned landscaping can often improve the interface of the development when viewed from the street and from adjacent properties, which can in turn reduce the visual bulk and scale of development).
3. Adequate articulation and the use of design features, including colours and textures is incorporated in the architecture of the building to visually reduce the bulk and scale of the building.

The proposed design measures significantly reduce the environmental impacts of the development compared to a **more substantial two-storey "dwelling house"** that complies with the FSR requirement (i.e., dwelling house development can achieve an FSR of at least 0.6:1 and greater under the SEPP (E&CD Codes) 2006, as such, there is absolutely no nexus between bulk/scale and the FSR standard). The FSR standards in the LEP discriminate against development types other than dwelling house development, as such, there is no planning purpose to the standard. The proposed development is a far better outcome than a compliant more substantial two-storey "dwelling house" development.

The design of the proposed development ensures that the bulk and scale is not perceived as incompatible with the streetscape. It complies with the building height, landscaped area and site coverage requirements.

As such, the objectives of the standard have been achieved to a better degree than a development that would comply with the standard.



Photo – Nearby semi-detached dwellings development



Photo – Development on the corner of Albert Street and Hamby Street



Photo – Development on the corner of Albert Street and Hamby Street

7. What is the numeric value of the development standard in the environmental planning instrument? – the numeric requirement is **0.5:1**.
8. What is the numeric value of the development standard in your development application? – the proposed development has an FSR of Dwelling 1 - **0.59:1** and Dwelling 2 - **0.62:1**.
9. What percentage variation (between your proposal and the environmental planning instrument)? – the variation equates to an 18% deviation for Dwelling 1 and 23% deviation for Dwelling 2.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case? – the application must address whether strict compliance with the standard in this particular case, would be unreasonable or unnecessary and why.

A decision in the Land and Environment Court **Wehbe v Pittwater Council** outlines a number of ways to establish that compliance with a development standard would be 'unreasonable' or 'unnecessary.' These include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

It is a well-known fact that the strict application of numeric requirements in the planning process restricts the design process and often produces poor urban design outcomes.

The Department of Planning's "Guidelines for the Use of State Environmental Planning Policy No.1" (refer to DOP Circular No.B1 - issued 17th March 1989) state that:

"As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small and in other cases it may be numerically large, but nevertheless be consistent with the purpose of the standard..."

In deciding whether to consent to a development application the Council should test whether the proposed development is consistent with the State, regional or local planning objectives for the locality; and in particular the underlying objective of the standard. If the development is not only consistent with the underlying purposes of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unnecessary and unreasonable."

Strict compliance with the development standard is unnecessary with this development, as the objectives of the standard are achieved, notwithstanding non-compliance with the numeric standard (i.e., the development meets the qualitative objectives of the numerical standard).

Allowing this variation request will result in a superior planning outcome and a semi-detached building form that is consistent with traditional suburban design. An alternative compliant, more substantial two-storey design with more floor space could be proposed, however, this would have a greater environmental impact on the adjoining property and not achieve wider planning outcomes of affordable and diverse housing choice.

The design, with specific architectural treatment, appears less bulky than a compliant more substantial two-storey building form (i.e., compliant development would have a similar streetscape and bulk and scale presentation to the street and the additional floor space is not visually perceivable).

It has been demonstrated that the locality displays bulkier building forms, as such, strict compliance with the standard would be unnecessary (i.e., its purpose is achieved anyway) and unreasonable (no purpose would be served in strictly insisting on a number).

In summary;

- The purpose behind the development standard (i.e., to limit bulk and scale) has been achieved by the proposed development notwithstanding exceedance with the numeric requirement.
- Compliance with the standard will defeat or thwart the purpose behind it (i.e., a greater FSR can be achieved for residential accommodation described as 'dwelling house'), which undermines the nexus between the objectives and the numeric requirement; and
- There are several examples of similar developments in the locality which exceed the FSR requirement.

11. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act? – compliance with the standard may be achieved as outlined earlier (i.e., a bulkier, more substantial two-storey dwelling house development in lieu of the proposed development), however, this would result in a negative impact on the amenities of the neighbouring properties rather than a positive impact. A compliant dwelling house design involving a more substantial two-storey building form would create a building with a greater bulk and scale than the proposed development offers. Alternatively, smaller semi-detached dwellings would significantly impact on the residential amenity of each dwelling, resulting in small living areas and/or bedrooms. As such, strict compliance with the numeric requirement in this instance, would not only serve no practical purpose but could cause adverse impacts to adjoining properties and the streetscape amenity in general.

In other words, due to the circumstances of this particular site, and the fact that a larger single dwelling house could be achieved, strict compliance would serve absolutely NO PLANNING PURPOSE, and limiting the FSR for semi-detached dwellings, impacts on the residential amenity of the proposed dwellings.

Deleting or making rooms smaller just to achieve strict compliance will result in a less orderly development of the site, which in turn significantly impacts on the economic viability of even developing the site, given the expectations of prospective purchasers to have such amenities.

12. Is the development standard a performance-based control? Give details – no (it is a numeric requirement with specified objectives). It should be noted, however, that the design is an innovative expression in building design that specifically addresses the character of the locality, site specific planning objectives and the environmental impact of the development on neighbouring properties, and privacy and overshadowing, in particular. Furthermore, the proposed development substantially complies with all other crucial siting and design requirements, such as:

- Building height;
- Setbacks from all boundaries;
- Private open space;
- Site coverage;
- Landscaped area; and
- Access and parking.

13. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why? – as discussed in item 10, the intent or objectives behind the development standard have been achieved through skilful design, therefore, strict compliance would be unnecessary (i.e., it is achieved anyway) and unreasonable (no purpose would be served). Furthermore, the environmental planning grounds or benefits, which are discussed further in the Variation Request, are both specific to the circumstances of the subject site and its context, as well as the broader policies associated with the provision of housing.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case [i.e., to satisfy CI 4.6(3)(a)] because the relevant objectives of the standard have been met by the skilful design of the proposed development and would not be achieved or would be thwarted by a complying development (i.e., a greater FSR can be achieved for residential accommodation described as 'dwelling house'), which undermined the purpose of the development standard, which relates to building bulk and scale.

There are sufficient environmental planning grounds for the variance because the development as proposed does not result in any environmental impact and the environmental benefits of the replacement of an aging single storey dwelling with poor amenity.

14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details – The L&E Court judgment in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development (i.e., simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 Variation).

On 20 August 2015, the NSW Court of Appeal handed down its decision on appeal from the Land and Environment Court's decision: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248. The case upheld Commissioner Pearson's original decision in regard to Clause 4.6 but it interpreted the approach taken by the Commissioner differently to Pain J. In doing so, the decision largely confines Commissioner Pearson's decision to the particular facts of that case and the particular exercise of discretion by the Commissioner.

More recently, Commissioner Tuor of the Land and Environment Court applied the Court of Appeal's approach in *Moskovitch v Waverley Council* [2016] NSWLEC 1015 and in effect confirmed a greater flexibility.

Basically, Commissioners and consent authorities have a broad discretion as to the approach they take.

In addition to the benefits to broader planning grounds, such as:

- Public benefit arising from additional housing, and
- An increase in the variety of housing stock¹.

1. The state government strategies for the delivery of housing includes the push for semi-detached and attached development and increased floor space ratio ranges.

The more specific environmental planning grounds [*Four2Five Pty Ltd v Ashfield Council*] are that specific design measures are required to address the opportunities of the site, that being a regular shaped allotment, which as a consequence of providing articulation and design measures, minimise the bulk and scale for development, has resulted in an exceedance to the FSR requirement (i.e., the proposed FSR would achieve better internal and external amenity outcomes, such as, solar access, privacy and streetscape presentation, than a larger complying two storey development with an even greater floor area).

Likewise, a compliant "semi-detached" development with less floor area would not, for all intents and purposes, achieve a better environmental outcome in the zone or enhance the residential amenity of residents living in the dwellings. In fact, compliance with the development standard would in this particular case, result in:

- o Bedrooms being lost (Note: it is important that housing caters to a wide spectrum of the community, including a growing family situation, especially in areas where the population is aging and existing infrastructure, such as, schools is underutilised or on the verge of being lost to developing areas); or
- o Crucial internal living areas being reduced in size.

From an urban design viewpoint, the development (in its current form) is consistent with the building character in the locality and will generally enhance the amenity of the streetscape, thus satisfying the planning principles established in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191.

It provides for all residential amenities, including off-street car parking expected for the lifestyle of its occupants, without any significant adverse environmental impacts to adjoining properties. There will be sufficient accommodation and realistic leisure areas to ensure the building is fit for its designed purpose. The design has sensible living areas that are not in any way considered excessive.

Although there is an exceedance in the numerical FSR standard for residential accommodation other than dwelling houses, the building is designed to limit bulk and scale i.e., less impacts than that of a larger, but compliant two-storey dwelling house.

As such, environmental planning benefits of approving the development in its current form outweigh the need for strict compliance.

As such, it has been demonstrated that there are sufficient environmental planning grounds to justify a variation to the development standard and Council may be satisfied that this written request adequately addresses Clause 4.6 (3)(a).

ATTACHMENT 2

CONTROL TABLE – SEMI-DETACHED DWELLINGS

Control	Requirement	Development Proposal	Complies
Frontage	N/A (existing allotment)	Proposed Lot 11 – 6.655m Proposed Lot 12 – 6.145m	N/A N/A
Lot Size	No Minimum	Proposed Lot 11 – 218.1m ² Proposed Lot 12 – 203.8m ²	N/A N/A
Building Height	8.5m (max)	Dwelling 1 – 7.488m Dwelling 2 – 7.488m	Yes Yes
Floor Space Ratio	Residential Accommodation (Semi-detached dwellings) – 0.5:1	Dwelling 1 – 0.59:1 Dwelling 2 – 0.62:1	No No
Site Coverage	Sites 200m ² – < 250m ² = 65%	Dwelling 1 - 36% Dwelling 2 – 39%	Yes Yes
Landscaped Area	< 250m ² – 15% (min)	Dwelling 1 - 33% Dwelling 2 – 29%	Yes Yes
Setbacks			
Front	Prevailing setback OR 6.0m	6m (generally consistent with adjoining development)	Yes
Side	Merit	939mm & Zero (50mm)	Yes
Rear	Lot width < 12.5m = 4.0m	Dwelling 1 – 7.172m Dwelling 2 – 7.172m	Yes Yes
Garage	5.5m (min)	➤ 5.5m	Yes
Car Parking	1 space per dwelling Single width garage permitted on sites less than 12.5m in width	1 space per dwelling single garage per dwelling	Yes Yes
Garages	1m behind front building alignment	➤ 1m behind front building alignment	Yes
Private Open Space	< 250m ² - 25m ² (min)	Dwelling 1 – 58.55m ² Dwelling 2 – 55.28m ²	Yes Yes
Paving	Max 50% of the front setback area	Dwelling 1 - < 50% Dwelling 2 – < 50%	Yes Yes

Bayside Local Planning Panel

10/09/2019

Item No	6.3
Application Type	Development Application
Application No	DA-2018/378
Lodgement Date	20/12/2018
Property	13A-17 Swinbourne Street, Botany
Ward	Ward 1
Owner	Ms S J Devlin Hemamali Gajadeera Mrs H P Jordan Mr R E Jordan Ms M Ludlow Somapala Rubasinghe
Applicant	Swinbourne Pty Ltd
Proposal	Integrated Development for demolition of the existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancy, 20 dwellings, basement and ground floor parking and stratum subdivision.
No. of Submissions	First notification – Two (2) Second Notification – One (1)
Cost of Development	\$6,210,200
Report by	Michael McCabe, Director City Futures

Officer Recommendation

- 1 That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approved a variation to the building height prescribed by clause 4.3 of the Botany Bay Local Environmental Plan 2013, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by clause 4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
- 2 That Development Application No.2018/378 for demolition of existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancies, 20 dwellings, basement and ground floor parking and strata subdivision, be APPROVED pursuant to s4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
- 3 That the submitters be notified of the Bayside Local Planning Panel's decision.

- 1 Planning Assessment Report [!\[\]\(3597aefc78044c84db150b22968c49d4_img.jpg\)](#)
- 2 Site Plan [!\[\]\(6958ec89bcfcc2369ac59b81f0733cee_img.jpg\)](#)
- 3 Elevations [!\[\]\(7d741ef547ec037d4ecbf1a76e69edcb_img.jpg\)](#)
- 4 Photomontages [!\[\]\(7c9c591cf01297b26286687fd43a5510_img.jpg\)](#)
- 5 Isolated Site Concept Plans [!\[\]\(b6a2ad56383f3c60fd717e42bf001d43_img.jpg\)](#)
- 6 Clause 4.6 - Building Height [!\[\]\(09739ab6f2c6341fd8b8ad31c8d3a562_img.jpg\)](#)
- 7 Design Review Panel Minutes [!\[\]\(b89a97ec79da374ec8c3dfe4daed4ed7_img.jpg\)](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2018/378
Date of Receipt:	20 December 2018
Property:	13A-17 Swinbourne Street, Botany
Owners:	Ms Sharen Josephine Devlin Hemamali Gajadeera Mrs H P Jordan Mr R E Jordan Ms M Ludlow Somapala Rubasinghe
Applicant:	Swinbourne Pty Ltd
Proposal:	Integrated Development for demolition of existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancy, 20 dwellings, basement and ground floor parking and stratum subdivision.
Recommendation:	Approval subject to conditions
Value:	\$6,210,200.00
No. of submissions:	First notification – Two (2) Second notification – One (1)
Author:	Patrick Nash - Senior Development Assessment Planner
Date of Report:	26 August 2019

Key Issues

Bayside Council received Development Application No.2018/378 on 20 December 2018 seeking consent for the demolition of the existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancy, 20 dwellings, basement and ground floor parking and stratum subdivision at 13A-17 Swinbourne Street, Botany.

The application is classified as Integrated Development in accordance with the *Water Management Act 2000* as the development involves a temporary construction dewatering activity. As such the application was referred to Water NSW and general terms of approval have been received and imposed in the recommended conditions of consent.

The key issues identified in the assessment of the development application relate to:

- Minor non-compliance with the building height development standard within BBLEP 2013;
- Non-compliance with the communal open space and solar access requirements identified within the ADG;

- Non-compliance with the front setback requirements within Part 5.2.2.5 of BBDCP 2013; and
- Site isolation

The applicant has provided amended plans and other supporting material to address the concerns raised by Council. The non-compliant aspects of the development are considered to be acceptable for reasons identified within the main body of the report. However, minor design changes are recommended to ensure that the quantum of communal open space achieves the minimum requirements set out within Part 3D of the ADG.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, subject to conditions of consent.

Recommendation

It is RECOMMENDED:

1. THAT the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979 approved a variation to the building height prescribed by clause 4.3 of the Botany Bay Local Environmental Plan 2013, as it is satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by clause 4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and the objectives for development within the zone.
2. THAT Development Application No.2018/378 for demolition of existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancies, 20 dwellings, basement and ground floor parking and strata subdivision, be APPROVED pursuant to s4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
3. THAT the submitters be notified of the Bayside Local Planning Panel's decision.

Background

History

- **20 December 2018** – DA.2018/378 was submitted to Council.
- **7 January 2019 to 30 January 2019** – The application was notified and advertised in accordance with BBDCP 2013. Two (2) submissions were received.
- **13 February 2019** – The applicant was advised that, to enable further assessment of the application, a report that assesses any potential impacts from ingress of contaminants or vapours into the basement car park from the contaminated groundwater plume on the development is required.
- **7 March 2019** – The application was reviewed by Council's Design Review Panel (DRP).
- **13 March 2019** – The application was referred externally to the NSW Office of Water.

- **4 April 2019** – An additional information letter was sent to the applicant. The concerns identified included: Various comments made by the DRP, incorrect calculation of gross floor area, privacy impacts, location of air conditioning units, various matters raised with respect to traffic, parking and access, stormwater management, flooding, deep soil area and design of the rooftop communal open space.
- **10 April 2019 to 21 May 2019** – The application was re-notified due to it being identified as constituting Integrated Development. One (1) submission was received.
- **17 April 2019** – The applicant requested a time extension to finalise the amended plan submission. This was granted by Council.
- **23 May 2019** – The applicant requested a further time extension to finalise the amended plan submission. This was granted by Council.
- **7 August 2019** – The applicant submitted amended architectural plans and other supporting information. The amended plans were not required to be re-notified in accordance with BBDCP 2013 because the proposal would result in similar or less impacts for the streetscape and/or surrounding properties. In summary, the plans were amended as follows:

BASEMENT

- Layout change, lift minor relocation
- Garages removed
- Previously 25 car spaces, revised plans propose 26 car spaces
- Removal of grease arrestor
- Fire hydrant booster and pump relocated to ground floor
- Shared zones for accessible spaces removed from vehicle aisles

GROUND FLOOR

- Floor levels raised to RL8.80 in response to flood requirements
- Waterproof reinforced perimeter concrete upstand to RL9.0 implemented in response to flood requirements
- Residential entry lobby relocated to Albert Street and separated from commercial entry
- Lift minor relocation to suit entry lobby
- Fire hydrant booster and pump relocated from basement to ground floor on Albert Street
- 4 commercial tenancies combined to one tenancy (R01) of 298.5sqm
- Demolition of existing wall on boundary to 31 Albert Street and removal of proposed enclosure on Albert street. New lapped and capped timber 1.8m boundary fence proposed
- 2 x car spaces west of garage door and below the non-habitable floor level of RL 8.56 have been removed.
- Previously 16 car spaces provided, revised plans propose 15 car spaces
- Removal of existing tree – T8 as per arborist report. New replacement tree planting proposed
- Removal of hard/active landscaping elements to rear deep soil area to increase deep soil provision
- Relocation of stormwater absorption system towards the Albert Street boundary to facilitate overland flow and increase deep soil area around existing retained tree
- Awning to Swinbourne St steps around existing street trees in response to Arborist's recommendation.
- Commercial loading bay clearance = 3m min
- Internal basement access ramp min width of 4.3m

FIRST FLOOR

- Reconfigure APT's 1.07, 1.08 and 1.09 to become north facing and receive additional sunlight to living areas and remove overlooking to internal courtyard
- Increase the set back of APT 1.08 and APT 1.09 by further 1m from northern boundary
- Additional horizontal and vertical privacy blades added to northern facing facade
- Minor internal reconfiguration of apartments to comply with min. room, balcony sizes and ensure compliant solar access is achieved.
- Lift minor relocation

SECOND FLOOR

- Increase the set back of APT 2.08 and APT 2.09 by further 1m from northern boundary
- Additional horizontal and vertical privacy blades to northern facing facade
- Minor internal reconfiguration of apartments to comply with min. room, balcony sizes and ensure compliant solar access is achieved.
- Removed Apt 2.08 balcony from east facing courtyard. Horizontal privacy screens added to prevent overlooking from Level 2 windows to P.O.S below.
- Additional horizontal privacy screens to north facing courtyard to prevent overlooking to APT 1.10 terrace below
- Lift minor relocation

ROOFTOP

- Lift minor relocation
- Communal Open Space of 254.6sqm reconfigured with detailed landscaping elements and mature planting with provision for deep soil
- Roof and pergola extension with provision for shading plants
- Party walls of POS and COS raised and designed to create privacy and interface with the new roof and pergola
- Mechanical plant located on roof, hidden behind the arrays of PV panels

ELEVATIONS

- Façade mounted planter boxes have been removed

Proposal

This development application (in its amended form) seeks consent for demolition of the existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancy, 20 dwellings, basement and ground floor parking and stratum subdivision.

The proposed development is further summarised as follows:

Basement

- 26 car parking spaces, including 2 accessible spaces;
- Bulk storage;
- Plant and equipment; and
- Lift and fire stairs.

Ground Floor

- Deep soil area within the rear setback;

- 15 car parking spaces, including 1 accessible space (vehicular access off Albert Street);
- Residential and commercial bin storage;
- Residential lobby off Albert Street;
- 298m² retail tenancy at the front of the site;
- New awning.

Level 1

- 10 residential dwellings (6 x 1 bed and 4 x 2 bed).

Level 2

- 10 residential dwellings (6 x 1 bed and 4 x 2 bed).

Roof Level

- Communal roof top terrace (245m²); and
- Private open space areas for apartments 2.01, 2.02, 2.04, 2.05, 2.06, 2.07, 2.09 and 2.10.

Externally, the building presents a contemporary architectural appearance and incorporates a mixture of white face brick, clear glazing, metal roof/cladding, timber and powder coat aluminium.

The submitted photomontages of the development are re-produced below for reference:



Figure 1: Perspective – corner of Swinbourne and Albert Street



Figure 2: Perspective – Swinbourne Street



Figure 3: Perspective – Northern elevation

Subdivision

- Consent is sought for stratum subdivision.

Site Description

The subject site is located on the corner of Swinbourne Street and Albert Street, Botany. The site is commonly known as Nos.13A-17 Swinbourne Street. The site constitutes the following allotments:

Address	Lot	Deposited Plan
13A Swinbourne Street	A	399233
13 Swinbourne Street	B	399233
15 Swinbourne Street	1	212569
17 Swinbourne Street	2	212569

The subject site is irregular in shape with a front boundary to Swinbourne Street of 31.36m, a western boundary to Albert Street of 33.53m, an eastern side boundary of 36.61m, a rear boundary of 34.24m, and a total site area of 1225m². The site is relatively flat with a fall of approximately 500mm from the south-eastern corner of the site to the north-western corner. There are a few trees throughout the site as well as various street tree along the Swinbourne Street/Albert Street verge.



Figure 4: Subject site identified in red



Figure 5: The subject site as viewed from Swinbourne Street



Figure 6: The subject site as viewed from Albert Street

The subject site is located in the B1 – Neighbourhood Centre zone adjacent to an older single storey commercial building to the east. To the west, on the opposite side of Albert Street is the side boundary of No.9 Swinbourne Street. Adjoining the site to the rear (north) is No.31 Albert Street which contains an existing single storey residential dwelling. The remainder of Albert Street is generally characterised by one and two storey dwellings. Swinbourne Street contains a well vegetated median strip that is identified as a heritage listed item in BBLEP 2013 (Item I158 – Streetscape verge planting of Canary Island Date Palm).

It is noted that the Bayside Planning Panel has considered the following development which are in the immediate vicinity of the subject site:

Site	Description of Development	Date
23 Swinbourne Street, Botany	Integrated Development for the demolition of the existing structures on site and construction of a three storey shop top housing development and basement parking.	APPROVED 28 November 2017
31 Albert Street, Botany	Demolition of existing structures, Torrens Title subdivision into two lots and construction of two semi-detached dwellings and swimming pool.	DEFERRED on 28 May 2019

Statutory Considerations

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S.4.15(1) - Matters for Consideration – General

S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

Environmental Planning and Assessment Act 1979 – Part 4, Division 5 – Special Procedures for Integrated Development and Environmental Planning and Assessment Regulations 2000 – Part 6, Division 3 – Integrated Development

The relevant requirements under Division 5 of the EP&A Act and Part 6, Division 3 of the EP&A Regulations have been considered in the assessment of the development applications. The development application is Integrated Development in accordance with the *Water Management Act 2000* as the development involves a temporary construction dewatering activity. In this regard, the development application was referred to Water NSW. Water NSW provided its General Terms of Approval (GTA) for the proposed development. This development application has been recommended for approval subject to GTAs from Water NSW.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

An Arboricultural Impact Assessment report prepared by a qualified Arborist has been submitted with the application. The report provided recommendations for the removal and retention of trees, including tree protection measures for existing and retained trees. There is an existing Jacaranda tree straddling the rear common boundary that is proposed to be retained and protected. The four (4) street trees along the Swinbourne Street frontage are also proposed to be retained. The trees proposed to be removed from the site do not have a high retention value and there are suitable replacement trees proposed in the deep soil area at the rear of the site.

State Environmental Planning Policy (Infrastructure) 2007

The development proposes excavation in or near a gas pipeline corridor therefore Division 9 of the SEPP states that risks associated with development adjacent to the gas pipeline corridor needs to be assessed and those risks included in considerations prior to the determination of the application.

The application was referred to APA Group as the Moomba- Sydney Ethane Pipeline is located approximately 330m north-east of the subject site. They have provided the following comments in regards to the development:

"The development is not changing the current location class and therefore an SMS is not required and no further risk mitigation measures are necessary. Accordingly, on the basis of the information provided, APA does not object to the proposed development".

In view of the above, no further concerns are raised.

The proposed development is within 5m of an exposed overhead electricity power line. Therefore, the application was referred to Ausgrid in accordance with the requirements of clause 45(2) of SEPP (Infrastructure) 2007. Ausgrid raised no concerns to the proposal subject to conditions of consent which have been incorporated into the recommendation.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. 982828M prepared by Building Sustainability Assessment committing to environmental sustainable measures.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP No. 55 have been considered in the assessment of the development application, as the proposed development involves excavation for a basement car park. Clause 7 of State Environmental Planning Policy 55 requires Council to be satisfied that the site is or can be made suitable for its intended use at the time of determination of an application.

The application was referred to Council's Environmental Scientist who requested a groundwater assessment report. This report was prepared by the applicant and submitted to Council. SEPP 55 has been considered in the assessment of the proposal and is acceptable subject to the conditions imposed.

State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building

The provisions of State Environmental Planning Policy No. 65 'Design Quality of Residential Apartment Building' have been considered in the assessment of the Development Application.

During the development application process, the applicant submitted the proposal to the Design Review Panel (DRP) for consideration. The meeting was held on 7 March 2019. The comments made by the DRP have been addressed in the table below:

DRP comment/concern	Design solution/justification
<p><u>Context and Neighbourhood Character</u></p> <p>The Panel considered that generally the development proposal provides for a quality development and indicated support of the overall scheme. The Panel noted the non-compliance with the 3000mm setback (DCP) at the upper level but concluded that the proposed built form provided appropriate articulation and represented a design response that was compatible with the emerging local neighbourhood context.</p>	<p>Noted. The upper level front setback non-compliance has been addressed in more detail within the DCP discussion later in this report.</p>

<p><u>Built Form and Scale</u></p> <p>As noted, the Panel is supportive of the non-compliance with the DCP setback based on the proposed finishes and built form articulation.</p> <p>Design issues raised by the Panel include:</p> <p>The general interface between residential and commercial usages on the site and lack of separation with the ground floor layout favouring the commercial tenancies usages.</p> <p>The residential lobby to the ground floor should be separated from commercial usages and clearly defined. Waste storage facilities need to be reconfigured so that commercial waste is not in direct conflict with residential access and residents do not need to pass through commercial car parking to access their facilities.</p> <p>Accessible parking in the basement carpark should be reconfigured to provide a more usable and safer design outcome with close proximity for lift access and no interface with vehicular movements.</p> <p>Integration of units 108 and 208; the current arrangement results in privacy issues and poor design amenity.</p> <p>Lift lobbies require natural light and ventilation. The current configuration does not achieve this.</p> <p>The use of planter boxes linked to the external façade was questioned in terms of suitability and maintenance.</p> <p>The scale of hardscape proposed in the deep soil zone negates the purpose of deep soil and results in non-compliance and reduced useability of the space by residents. The proximity of the deep soil zone to commercial usage and parking was questioned.</p>	<p>Noted</p> <p>The residential lobby has been moved to the Albert Street frontage.</p> <p>The commercial and residential entry points and bin storage facilities have been clearly separated.</p> <p>The basement car parking layout has been amended accordingly.</p> <p>Whilst these units have not been integrated into a single unit, they are been re-designed to achieve an acceptable level of amenity and privacy.</p> <p>Natural light to the lift lobbies have not been achieved. However, this is not considered to be a determinative matter that would warrant refusal of the application.</p> <p>The external planter boxes have been removed.</p> <p>The finished treatment within the rear setback area has been modified to provide extensive soft landscaping in a consolidated deep soil area.</p>
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<p>Private stairwells and private open spaces on the rooftop were not supported. The rooftop communal and private open spaces should be amalgamated to create a well designed, dynamic, defined communal open space.</p>	<p>The communal open space area has been enlarged with the removal of some of the private open space areas. A further three (3) private open space areas are recommended to be deleted, given there is still a shortfall in the overall quantum of communal open space.</p>
<p><u>Density</u></p> <p>The Panel was generally supportive of the proposed density on site. It was noted that the recommended amalgamation of units 108 and 208 would slightly reduce the resident population and secure enhanced amenity.</p>	<p>These units have not been amalgamated but have re-configured to improve their amenity which is now considered to be satisfactory.</p>
<p><u>Sustainability</u></p> <p>The Panel noted that there are further opportunities to include sustainability initiatives in the design above and beyond those required by BASIX, such as solar energy generation to a revised rooftop scheme.</p> <p>The Panel noted that the nominated deep soil zone provides for the retention of existing trees. However the Panel did not support the extensive paving identified in the landscape design which defeats the objectives associated with the provision of deep soil zones.</p> <p>The Panel also noted that one of the retained trees is in close proximity to the built form and that a root protection zone needs to be considered.</p> <p>The deep soil zone would also benefit from an increased emphasis on soft landscaping and provision of new large scale canopy trees.</p>	<p>PV panels have been added at the northern end of the roof level.</p> <p>The treatment within the deep soil zone has been modified so as to be entirely soft landscaping. The hard surfacing has been removed.</p> <p>An arborist report has been provided. Suitable conditions of consent are imposed in this respect.</p> <p>The amended landscaped plan makes provision for new canopy trees.</p>
<p><u>Landscape</u></p> <p>The Panel noted inconsistencies between the landscape plans provided and architectural plans. The documents should be revised in accordance with the comments below:</p> <p>Revision of the Ground floor landscape deep soil zone (which the Panel did not</p>	

<p>consider an active communal open space) is required. "Permeable paving" in this area is not supported. An emphasis on softscape as a landscape treatment is supported in contrast to an active communal open space with a poor interface with commercial uses.</p> <p>Planter boxes to the façade treatment need an adequate depth and width to support plant material. The documentation provided is unclear and it appears the sizes proposed are too small. In addition the long term maintenance and ease of access of these planter boxes is questioned.</p> <p>Revision of the communal rooftop open space as outlined above, noting the current rooftop communal open space indicates trees that are located under a solid roof structure and are not suitable.</p>	<p>The treatment within the deep soil zone has been modified so as to be entirely soft landscaping. The hard surfacing has been removed.</p> <p>The external planter boxes have been removed.</p> <p>The communal rooftop area has been re-designed so it is a large consolidated space with improved shading devices and landscaping outcomes.</p>
<p><u>Amenity</u></p> <p>The Panel considered the amenity of the proposed development would be improved by:</p> <p>Increased separation between residential and commercial uses at the ground floor level.</p> <p>A signage strategy incorporated into the DA which is designed to maintain the architectural quality of the façade.</p> <p>Internal redesign to ensure natural light and ventilation to the lift lobby area.</p> <p>Deletion of private stairwells and POS on the rooftop. Redesign and arrangement of the rooftop communal area to provide for a meaningful open space and shade as well as providing for solar passive energy generation.</p>	<p>The relationship of the residential and commercial uses on the ground floor has been re-worked to ensure that they are suitably separated.</p> <p>No signage is proposed under this DA.</p> <p>Refer to previous comments.</p> <p>The number of POS areas on the rooftop has been reduced from 9 to 8 and the communal area subsequently increased in size. A larger pergola structure has been provided. A further 3 rooftop POS areas are recommended to be removed so as to ensure a compliant sized COS area is provided.</p>

<p><u>Safety</u></p> <p>The Panel noted three key areas of concern:</p> <p>Ground floor interface between residential and commercial uses.</p> <p>Privacy and poor surveillance issues between units 108 and 208.</p> <p>Poor relationship of spaces to the rooftop POS and COS uses.</p>	<p>The residential and commercial entry points have been clearly separated on the ground floor.</p> <p>See previous comments</p> <p>See previous comments</p>
<p><u>Housing Diversity and Social Interaction</u></p> <p>The Panel was generally supportive of the apartment mix. Social interaction could be enhanced by providing clarity/security for the residential entry lobby and minimising conflicts with commercial functions.</p>	<p>The residential and commercial entry points have been well delineated in the amended plans.</p>
<p><u>Aesthetics</u></p> <p>The Panel was generally supportive of the proposed design subject to the comments above.</p>	<p>Noted</p>

Design Quality Principles and Apartment Design Guide

A Design Verification Statement has been prepared by *AN+A Architects* and was submitted with the development application. The proposed amended development is considered to satisfy the Design Quality Principles contained within SEPP 65.

An assessment of the proposed development against Part 3 and 4 of the ADG has been undertaken. The key ADG design requirements are detailed in the table below.

Clause 30(1) of SEPP 65 states that if a development application satisfies the following design criteria, the consent authority cannot refuse an application because of those matters. These are deep soil, ceiling heights and building separation.

SEPP 65 – ADG			
Control	Requirement	Proposed	Complies
Dwelling Size	Minimum internal areas as follows: 1 bed unit: 50sqm 2 bed unit: 70sqm	1 bed units: 50-62sqm 2 bed units: 76-90sqm	Yes Yes

	2 bed unit with 2 nd bathroom: 75sqm 3 bed unit: 90sqm 3 bed unit with 2 nd bathroom: 95sqm		
Ceiling Height	Habitable Rooms: 2.7m Non-habitable: 2.4m Mixed Use: 3.3m for ground and first floor	Floor to floor height for residential levels: 3.1 metres which enables a compliant floor to ceiling height to be achieved Ground floor retail is provided with a 3.49m floor to floor height which enables a compliant floor to ceiling height.	Yes Yes
Deep Soil	Objective 3E-1 requires 7% of the site as deep soil area (requires 85.75sqm)	138sqm(11%)	Yes
Communal Open Space	25% of site (306sqm)	254sqm (20%)	No – refer to note 1
Solar Access	50% direct sunlight to the principal usable part of the COS for a minimum of 2 hours during mid-winter	More than 50% of COS on the roof level receives greater than 2 hours of sun due to its location.	Yes
	Living rooms and POS for at least 70% of apartments (and in neighbouring development) to achieve 2 hours between 9am and 3pm	70% (14/20) of apartments will receive at least two hours of sunlight during June 21 st .	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter	20% (4/20) of apartments (1.05, 1.06, 2.05 and 2.06) are south facing and do not receive direct sunlight between 9am and 3pm in mid-winter.	No – refer to Note 2
Building Separation	<u>Up to 4 storeys (approx. 12m):</u>	The rear of the development is proposed to be setback 6m-7m from the northern	

	3m from non-habitable rooms to site boundary 6m from habitable rooms/balconies to site boundary	boundary. The additional 3m setback to the lower density zone to the rear is not provided.	No – refer to Note 3
Balcony Sizes	1 bed: 8sqm 2 bed: 10sqm 3 bed: 12sqm	1 bed: 8-10sqm 2 bed: 10sqm	Yes Yes
Cross Ventilation	At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building.	70% (14/20 units)	Yes
Storage	1 bed: 6m3 2 bed: 8m3 3 bed: 10m3	Storage spaces within the units and in the basement area has been identified on the plans. The submitted apartment storage schedule indicates that the extent of storage provided exceeds the minimum requirements.	Yes

Note 1: Communal Open Space

The proposal is required to provide 25% of the site area (equivalent to 306m²) as communal open space in accordance with Part 3D of the ADG. The information submitted with the application indicates that there will a total of 254m² (roof top communal open space) which equates to 20.6%. The extent of the non-compliance is 52m² or 4.4%.

The design of the rooftop area also incorporates private open space areas for 8 of the proposed dwellings. It is noted that these spaces are secondary areas of private open space, as each dwelling is also provided with a separate balcony on Level 2. They are therefore not relied upon to satisfy Part 4E – Private open space and balconies of the ADG. The Design Review Panel advised that the rooftop communal and private open spaces should be amalgamated to create a well-designed, dynamic, defined communal open space. Whilst improvements have been made to the design in this respect, there are insufficient planning reasons identified to support a variation to the ADG.

In view of the above, a condition of consent has been recommended for the rooftop private open space areas 2.01, 2.02 and 2.10 to be converted to communal open space and incorporated into the design accordingly. This would result in a compliant level of communal open space to satisfy the ADG requirements (a total of 314.09m² or 25.6%).

Note 2: Solar Access

Part 4A – Solar and daylight access of the ADG specifies that a maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter. Based on 20 apartments, this equates to a maximum of 3. There are however 4 proposed apartments (1.05, 1.06, 2.05 and 2.06 facing Swinbourne Street) which do not receive direct sunlight in mid-winter. This equates to 20% of the development, not complying with the 15% maximum. The extent of the breach is considered to be minor (i.e. – 1 dwelling). Further, apartments 2.05 and 2.06 are provided with secondary private open space areas on the rooftop which will receive solar access to improve the amenity of these apartments. On balance, the variation (being 1 apartment) is considered to be a function of the orientation of the site as opposed to shortcomings in the design/apartment layouts.

Note 3: Building separation

The site adjoins the R2 – Low Density Residential zone to the north in Albert Street. It is noted that Part 2F – Building separation states the following:

At the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m.

The above guideline would dictate a 9m rear setback to the northern boundary. The proposed building setbacks to the north are 6m (ground floor) and 6-7m (first and second floor). The additional 3m setback to the lower density zone has not been provided. The proposal is supported in its current form for the following reasons:

- The proposed development provides greater rear setbacks than the approved mixed use building at No.23 Swinbourne Street. That development was approved with rear setbacks of 3m (first floor) and 6m (second floor); and
- BBDCP 2013 does not stipulate a setback requirement. Rather, it states “***The setback from the rear is to be determined following a detailed site analysis at development application stage and must satisfy Council that the amenity of neighbouring residential properties are protected in terms of sunlight and natural daylight access, privacy and visual amenity***”. There are no overshadowing impacts, given the orientation. Privacy has been addressed through the provision of timber privacy screens as well privacy blades to the rear balconies. There is also an existing tree which is to be retained and provides some screening. Visually, the development incorporates a large break in the centre of the building to regulate the bulk and scale. The development is well below the LEP height limit at the northern most end of the building. See below:

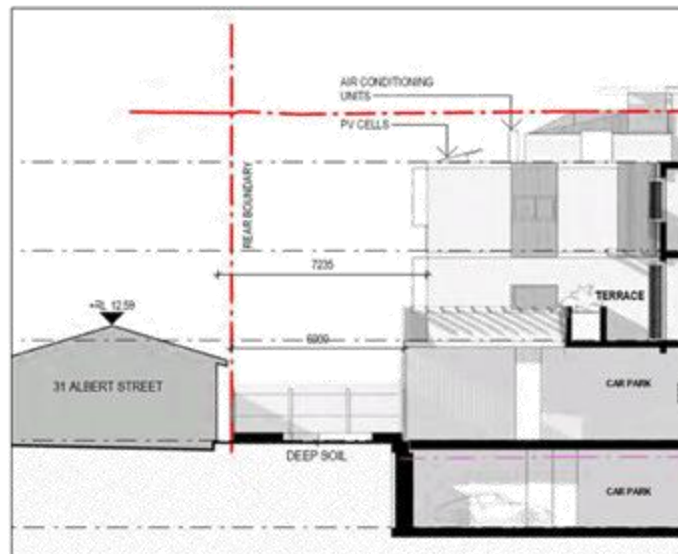


Figure 7 - Section extract demonstrating compliant building height at the rear most plane

SEPP 65 Design Principles

The assessment of the proposal has had regard to the SEPP 65 Design Principles. The following summary against each of those principles is provided:

Context and Neighbourhood Character

The character of this area of Botany is evolving and it is considered that the proposal responds well to the anticipated future character.

Built Form and Scale

The built form and scale of the development is generally appropriate for the site and its surroundings. The proposal is compliant with the FSR development standard and provides acceptable building setbacks and articulation.

Density

The density is acceptable, noting that the extent of gross floor area proposed is compliant with the floor space ratio development standard within BBLEP 2013.

Sustainability

The BASIX Certificate provided is relied upon as a sustainability measure. PV panels are also proposed on the roof top of the building.

Landscape

The landscaping outcomes proposed are generally satisfactory. A 6m wide deep soil zone is provided within the northern rear setback area.

Amenity

The proposal is generally compliant with the solar access, natural ventilation and apartment layout guidelines set out in the Apartment Design Guide.

Safety

The development provides an acceptable activation of the ground floor facing Swinbourne Street which enables additional casual surveillance opportunities. The building entries are legible. Overall, a positive relationship between public and private spaces is achieved.

Housing Diversity and Social Interaction

The proposal provides an appropriate mix of 1 and 2 bedroom dwellings. There are social interaction opportunities by virtue of the communal open space areas.

Aesthetics

The design achieves an acceptable aesthetic quality.

Botany Bay Local Environmental Plan 2013

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned B1 Neighbourhood Centre zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed use as <i>shop top housing</i> is permissible with Council's consent under the Botany Bay Local Environmental Plan 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the B1 Neighbourhood Centre: <ul style="list-style-type: none"> To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood. To ensure that development does not adversely impact on residential amenity and is compatible with the existing streetscape.

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Does Schedule 1 – Additional Permitted Uses apply to the site? If so what additional uses are permitted on the site?	N/A	Schedule 1 does not apply to the site.
What is the height of the building? Does the height of the building comply with the maximum building height?	No – Refer to Note 1	A maximum height of 12 metres applies to the subject site. The proposed development has a height of up to 13.8m and therefore does not comply with the building height development standard. The non-compliant elements relate to the lift overrun, fire stairs and roof top pergola structure only. A Clause 4.6 variation was provided with the application and is discussed in Note 1 below.
What is the proposed Floor Space Ratio? Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?	Yes	The maximum Floor Space Ratio requirement is 1.5:1 (1837.5sqm). The proposed gross floor area is 1832sqm which is compliant.
Is the proposed development in a R3/R4 zone? If so does it comply with site of 2000m ² min and maximum height of 22 metres and maximum Floor Space Ratio of 1.5:1?	N/A	The site is not located within the R3 Medium Density Residential or R4 High Density Residential zone.
Is the site within land marked "Area 3" on the Floor Space Ratio Map? If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?	N/A	The site is not located in an Area 3 zone.
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	Yes	The site is not listed as a heritage item, nor is it located within a Heritage Conservation Area. However, Heritage Item I158 'Streetscape- Verge Plantings Canary

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
		Island Date Palm' is adjacent to the site along the south. The proposed development would not adversely impact the heritage significance of these trees. No further concerns are raised in this regard.
The following provisions in Part 6 of Botany Bay Local Environmental Plan apply–		
• 6.1 – Acid Sulfate Soils	Yes	The site is located in a Class 4 Acid Sulfate Soils Area. A preliminary Acid Sulfate Soils Assessment and Geotechnical investigation has been provided with the application. Appropriate conditions have been recommended in the consent.
• 6.2 – Earthworks	Yes	The proposal includes excavation of one basement level. The development will encounter the groundwater table and the application was referred to Water NSW who had no objections to the proposal. Appropriate conditions have been imposed in the consent.
• 6.3 – Stormwater Management	Yes	The proposal has been reviewed by Council's Development Engineer who has no objection subject to conditions in the consent.
• 6.9 – Development in areas subject to aircraft noise	N/A	The site falls outside the 20 ANEF Contour.
• 6.15 – Active Street frontage	Yes	The proposal is in area where active street frontage is required along Swinbourne St. The development will have a retail space on the ground floor fronting Swinbourne Street and Albert Street. A suitable active street frontage is therefore enabled.

Note 3 – Clause 4.6 variation relating to height non-compliance

The applicant has provided a Clause 4.6 variation to the maximum permissible building height of 12 metres pursuant under Clause 4.3 of the BBLEP 2013. The proposal has a maximum building height of 13.8m, a breach of 1.8m or 15% at the worst point.

The following plan extracts illustrate the non-compliant portions of the building:



Figure 8: Section CC extract



Figure 9: Section AA extract

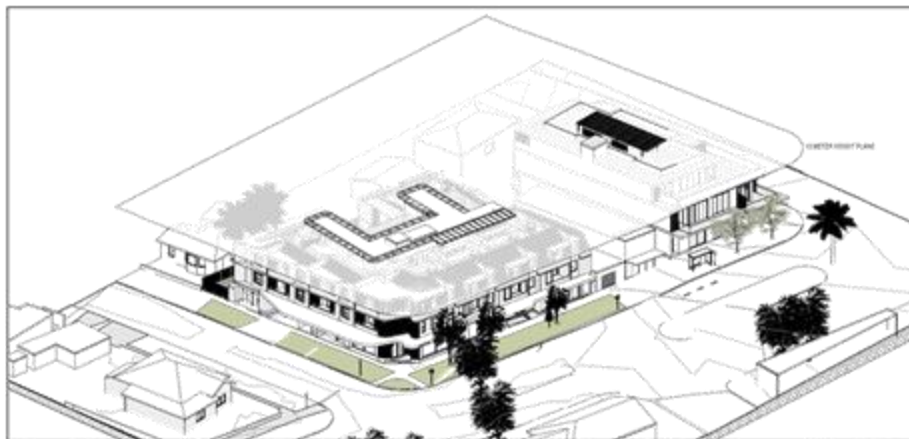


Figure 10: 12m height plane diagram. Approved development at No.23 Swinbourne Street also shown which does not comply with the height development standard.

As can be seen from Figures 8 - 10 above, the non-compliant building elements relate to the pergola structure/WC within the rooftop communal area and the lift overrun/fire stairs.

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure.

The applicant provided a clause 4.6 variation addressing the building height non-compliance which has been included as an attachment to this report. The relevant provisions of clause 4.6 of BBLEP 2013 have been addressed as follows:

Clause 4.6(3)(a) – compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and

Compliance with the building height development standard is unreasonable or unnecessary because the proposal is consistent with the objectives of the height development standard contained in clause 4.3 of BBLEP 2013. The justification provided by the applicant in this respect is re-produced below:

OBJECTIVE (A) TO ENSURE THAT THE BUILT FORM OF BOTANY BAY DEVELOPS IN A COORDINATED AND COHESIVE MANNER

The *Height of Buildings Map* indicates that the 12m height limit that applies to the subject site and also applies to land in the immediate vicinity within Zone B1. Zone B1 extends to the east and south of the site, beyond the B1 Zone is R2 Low Density Residential zone where building height transitions to 8.5m. At present, the built form within the block is characterised by a combination of older housing stock and commercial development with the approval for a three storey shop top housing development to the east at No.23 Swinbourne Street (DA-16/237). As such building heights are varied and no existing development takes up the maximum building height of 12m however, it is noted that DA-16/237 was approved with a variation to the maximum height limit.

As mentioned, the maximum height of the proposal is 13.8m when measured to the top of the lift overrun and rooftop pergola. The structures are set in from the Swinbourne Street and Albert Street facades and therefore present as recessive elements that are not readily apparent from street level. The breach in roof height is a product of providing rooftop communal open space. Communal open space on the roof is encouraged by the ADG and provides superior amenity to future occupants of the development. Accessibility to the roof communal area in the form of lift and stairs is required, thereby requesting a variation to the building height control. The roof pergola will provide protection from the elements, which will increase useability and amenity of the development.

It is considered that the recently approved development at No.23 Swinbourne Street provides an indicative built form as envisioned by Council and it is anticipated that development at the adjoining site, No.19 Swinbourne Street will present similarly. Once the development has been completed within the neighbourhood centre it will present as a coordinated and cohesive streetscape, with acceptable built form outcomes.

OBJECTIVE (B) TO ENSURE THAT TALLER BUILDINGS ARE APPROPRIATELY LOCATED

The function of the *Height of Building Map* is, as suggested by objective (b), to identify appropriate locations for taller buildings. The *Height of Buildings Map* indicates that the maximum building height for the site is 12m and is therefore identified as a location where 'taller' buildings are appropriate. The proposal does not strictly comply with this requirement (hence the request to vary the development standard), however is not substantially taller than the height of buildings anticipated in this location. It is submitted that the proposal, which may be considered a 'taller' building, is appropriately located.

OBJECTIVE (C) TO ENSURE THAT BUILDING HEIGHT IS CONSISTENT WITH THE DESIRED FUTURE CHARACTER OF AN AREA

Much of the discussion provided against objective (a) is also relevant to this objective. In brief, the desired future character of an area is, to some degree, determined by the building envelope provisions that apply to the site. In this case, future development at No.23 Swinbourne is generally consistent with the 12m height with a minor variation proposed for the lift overrun and pergola structure. It is therefore conceivable that future development in the B1 Zone will have a building height of 12m. It is also conceivable that many sites with similar development forms will seek to vary building height (as seen at No.23 Swinbourne Street and as is anticipated at No.19 Swinbourne Street) to account for the ADG communal open space provision. It is considered that the proposal, although marginally non-compliant with building height, is consistent with the desired future character of the area, noting that the term 'consistent' does not necessarily mean 'the same as'.

OBJECTIVE (D) TO MINIMISE VISUAL IMPACT, DISRUPTION OF VIEWS, LOSS OF PRIVACY AND LOSS OF SOLAR ACCESS TO EXISTING DEVELOPMENT

Despite non-compliance, the proposal is designed and located to minimise visual impact, disruption of views, loss of privacy and loss of solar access to neighbouring development as described below:

- The lift overrun and rooftop pergola is set in from each street facade and therefore present as recessive elements that are not readily apparent from street level. The part of the building that is non-compliant with building height, does not contribute significantly to the visual bulk of the development. It is submitted that the difference between the proposal and a development that complies with building height will be negligible when viewed from the streetscape.
- It is understood that there are no significant views obtained from or through the site that will be obscured by the non-compliant aspect of the building.
- The lift overrun and pergola do not contribute to loss of visual privacy. The communal area is recessed from all boundaries and compliant building height elements of the building such as balconies are provided with privacy screens. These features preclude cross viewing or overlooking of neighbouring properties therefore ensuring visual privacy.
- Solar access diagrams have been prepared and are submitted with the development application. The diagrams demonstrate that, although the building is marginally non-compliant in terms of building height, solar access to neighbouring properties is not unreasonably reduced as a result of the height increase. Due to site orientation the proposal does not excessively overshadow existing adjacent development.

As described above, although non-compliant with building height, the proposal is designed and located to minimise visual impacts, disruption of views, loss of privacy and overshadowing and therefore achieves the objective.

OBJECTIVE (E) TO ENSURE THAT BUILDINGS DO NOT ADVERSELY AFFECT THE STREETSCAPE, SKYLINE OR LANDSCAPE WHEN VIEWED FROM ADJOINING ROADS AND OTHER PUBLIC PLACES SUCH AS PARKS, AND COMMUNITY FACILITIES

It is anticipated that the locality will undergo a period of transition as properties are redeveloped to take advantage of the zoning changes and generous height and density controls introduced through the LEP. As previously discussed, the height of the proposal is considered to be compatible with the anticipated future character of the B1 Zone locality and in this regard makes a positive contribution to the desired streetscape. Until such time as neighbouring and adjoining sites are also developed, the proposal will be a prominent element in the immediate streetscape however will not be evident in the skyline in the same way as a residential tower is visible from a distance.

The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.

Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

The applicant's clause 4.6 exception provides the following justification:

Environmental Planning Grounds

There is no planning purpose to be served by limiting the height strictly to the maximum height allowable given the absence of significant amenity related impacts and compliance with the standard and zone objectives.

With regards to Clause 4.6(3)(b), there are sufficient environmental planning grounds to justify contravening the maximum height standard of the LEP as follows:

- The non-compliant lift overrun and pergola elements are a functional aspect of the building, ensuring efficient access to the roof communal open space. The required ADG communal open space provides superior amenity to future occupants with weather protection.
- The discussions provided in this variation request have demonstrated that the marginal height breach will have no adverse impact on the character of the locality, the amenity of neighbouring properties. The lift overrun and pergola will not be readily visible, do not cast additional excessive shadows and do not give rise to privacy impacts nor does it result in view loss. In the absence of any adverse impact, it is considered that to require strict compliance with the development standard would, in this instance, be unreasonable and unnecessary; and
- To achieve compliance with the building height standard, the building would need to be reduced by a relatively insignificant margin of 1.8m. The visual bulk associated with the non-compliant 1.8m is negligible when compared to the visual bulk of a compliant scheme. The reduction in height would however have significant implications for the proposal as it would effectively preclude the rooftop communal open space reducing residential amenity.

Officer Comment: It is noted that a similar height non-compliance has been approved at No.23 Swinbourne Street, east of the subject site. This application was approved at the Bayside Local Planning Panel meeting on 28 November 2017. The extent of the height breach on that site was 1.55m or 12.9%. Refer to approved plan extract below:



Figure 11: Approved Section – 23 Swinbourne Street

Clause 4.6(4)(a)(i) – the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

The applicant's written request is considered to adequately address the matters required to be demonstrated by clause 4.6(3) of BBLEP 2013.

Clause 4.6(4)(a)(ii) - the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

It is considered that the proposal is consistent with the objectives of the building height development standard within clause 4.3 of BBLEP 2013 for reasons previously identified. The proposed development would also be consistent with the objectives of the B1 – Neighbourhood Centre zone as demonstrated below:

B1 – Neighbourhood Centre zone objective	Comments/assessment
To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.	The proposed development provides a retail tenancy on the ground floor. This is shown to be a single tenancy with capability to be broken up into two (2) smaller tenancies. This objective is satisfied.
To ensure that development does not adversely impact on residential amenity and is compatible with the existing streetscape.	The proposal is a well-designed and sited shop top housing development that is compatible with the existing and desired future streetscape along this part of Swinbourne Street. The proposed development does not adversely impact upon the amenity of surrounding residential properties, noting that the adjoining R2 zone at the rear is directly to the north and the proposal provides sufficient building separation.

Concluding remarks

The request to vary the building height development standard has been assessed in accordance with the provisions of Clause 4.6 and relevant case law, being the principles of *Wehbe v Pittwater Council* [2007] NSW LEC 827 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 & NSW LEC 90 (*Four2Five*). The proposal is consistent with the underlying objectives of the standard identified and is consistent with the objectives of the B1 – Neighbourhood Centre zone. The proposal and Council's assessment has concluded that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development will be in the public interest because it is consistent with the objectives of the building height development standard and the objectives of the B1 – Neighbourhood Centre zone.

In view of the above, the provisions of clause 4.6(4) of BBLEP 2013 are satisfied.

S4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no current Draft EPIs applicable to this development

S4.15(1)(a)(iii) - Provisions of any Development Control Plan**Botany Bay Development Control Plan 2013**

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013 as follows:

Part 3A – Parking and Access

The proposed development complies with the car parking rates specified within BBDCP 2013. It is noted that Council's Development Engineer has imposed conditions of consent to ensure that the car parking layout is workable and achieve the DCP requirements.

Dwelling size	Required	Provided	Compliance
1 bedroom unit (12)	1 space/unit = 12 spaces	12	Yes
2 bedroom unit (8)	2 spaces/unit = 16 spaces	16	Yes
Visitors Parking	1 space/5 dwellings = 20/5 = 4 spaces	4	Yes
Residential total (20 units)	32 spaces	32	Yes
Service bay residential	1 space per 50 dwellings = 1 MRV space	0	Van accepted instead
Business premises (298.53m ²)	1 space/40m ² = 7.46 = 8 spaces	8	8
Service bay retail/business	1 MRV space required	0	Van accepted instead
Overall total	40 spaces	40	Yes
Adaptable unit (4)	0.5 of adaptable units = 2 spaces 1 for retail/business 1 for visitor	4	Yes
Bicycle parking	1 space/10 car spaces = 4.7 = 5 spaces	5	Yes (conditioned)
Car wash bay (can be a visitor space)	Min 1 visitor space	1	Yes (conditioned)

Part 3B – Heritage

The subject site is not a heritage item and is not located within a heritage conservation area. However, it is in close proximity to Item 158 'Streetscape- Verge Plantings Canary Island Date Palm' adjacent to the site to the south. The proposed development would not adversely impact the heritage significance of these trees. No further concerns are raised in this regard.

Part 3C – Access and Mobility

An access report has been provided with the development application. Four (4) adaptable units are provided. All common areas such as the lobby and the rooftop communal area are

accessible either through levelled entry or through lift. A 1:14 ramp is provided along the front of the building to facilitate access into the retail tenancy. The application satisfies Part 3C of BBDCP 2013.

Part 3E – Subdivision and Amalgamation

The proposed development includes stratum subdivision into 2 lots (one for the residential component and the other for the commercial/retail tenancy). Suitable conditions of consent have been included (i.e. – before the issue of a Subdivision Certificate) to ensure that compliant with the requirements with Part 3E.

Part 3G – Stormwater Management

The amended application was referred to Council's Development Engineer for comment who had no objection to the proposal subject to conditions of consent which have been incorporated into the recommendation.

Part H – Sustainable Design

A BASIX Certificate accompanies the proposal and demonstrates a commitment to sustainability measures.

Part I – Crime Prevention, Safety & Security

The proposal has been designed to have casual surveillance over Swinbourne Street and Albert Street. Internally, the proposed development includes secure pedestrian and vehicle access. Suitable conditions have been imposed with respect to incorporating safer by design principles.

Part 3K – Contamination

Refer to the discussion above in State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land section of the report addressing contamination.

Part 3L – Landscaping & Tree Management

The street trees along Swinbourne Street and the Jacaranda along the rear boundary have been identified as warranting retention. The applicant has provided an Arboricultural Impact Assessment Report prepared by Bryce Claassens, dated 26 July 2019 which details suitable tree protection requirements (Part 11 of the report). Suitable conditions of consent have been included in this regard.

Part 3N – Waste Minimisation and Management

The proposal incorporates suitable waste management facilities. There is a bulk storage area within the basement level. Separate residential and commercial bin storage facilities are provided at the rear of the ground floor which will enable convenient kerb side collection from Albert Street.

Part 5 – Business Centres

The site is located within the Swinbourne Street Neighbourhood Centre. The objectives of the Centre that apply to the site under Part 5.2.2.5 of the BBDCP is as follows:

Objective	Response
O1 To promote a viable and attractive Neighbourhood Centre with an improved and safer public domain	The proposal will replace existing dwelling houses with a mixed use development. The retail tenancy have floor to ceiling windows which will allow for adequate surveillance. Additionally, the front residential lobby has been designed to allow for safe surveillance. The architectural style of the building is attractive through the use of different materials and articulation.
O2 To ensure that development recognises predominant streetscape qualities (i.e. setbacks & design features);	The development reflects the streetscape qualities of the surrounding site through the use of face brick. The three storey form proposed is an acceptable response, given the relevant planning controls.
O3 To ensure development complements the height and architectural style found in the immediate vicinity, particularly where this has a clearly established character;	The proposal is generally consistent with the maximum height of 12 metres with exception to the pergola and lift overrun to the rooftop. The development is one of the first that is proposed to be redeveloped therefore the scale and height of the existing built stock does not reflect the proposal however it is anticipated that the surrounding shops will be redeveloped in this manner. The architectural style proposed is visually aesthetic and complements the character of the locality.
O4 To retain existing heritage trees and supplement existing landscaping within the streetscape;	None of the trees on the site are heritage listed. The development will not impact on the trees located on the island strip along Swinbourne Street which are heritage listed.
O5 To allow reasonable redevelopment and to improve the architectural quality of building stock;	The proposal will replace older residential dwellings with a new mixed use development. The architectural quality of the building is visually aesthetic and is not out of character with the surrounding locality.
O6 To retain a coherent streetscape with a consistent street wall and parapet line	The proposal will create a consistent street wall along the front elevation to Swinbourne Street and the western side elevation to Albert Street.
O7 To ensure that access driveways do not dominate the streetscape; and	The driveway is not located along Swinbourne Street but along Albert Street which is a secondary street. The driveway design is not considered to dominate the streetscape.

O8 To ensure that shop top housing provides passive surveillance, resident interaction and addresses the street. To encourage development of awnings as balconies for residential and commercial units above (to improve amenity for unit dwellers and promote passive surveillance of streets).	The size and location of the units and balconies are large enough to provide for adequate surveillance from the residences.
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The following controls apply to the Swinbourne Street Neighbourhood Centre and are as follows:

Control	Proposed	Complies
5.2.2.5 Swinbourne Street Neighbourhood Centre		
C1 Development must provide landscaping, street trees, lighting, public seating, paving and other public domain improvements identified by Council, generally in accordance with Figure 20 .	A condition of consent has been incorporated which requires a public domain works plan to be prepared.	Yes
C2 Pedestrian amenity and connectivity must be enhanced in conjunction with new development.	The pedestrian amenity has been considered within the proposal and is acceptable.	Yes
C3 Redevelopment is encouraged through logical lot consolidation of sites and infill development. Avoid inappropriate lot consolidation patterns that would isolate and unreasonably restrict redevelopment on a single lot.	The proposed development potentially isolates No.19 Swinbourne. Refer to discussion later in this report which addresses this matter in detail.	No – refer to Note 2
C4 The design of development must be generally consistent with the Desired Future Character of the centre identified in Figure 20	The proposal complies and has been designed to reflect Figure 20 within the Desired Future Character section of the DCP.	Yes
C5 A maximum height of 12 metres applies under BBLEP 2013. Notwithstanding the 12 metre height limit, a maximum height of two stories applies along the street frontage with a third level permitted which is setback from the street frontages and the rear.	The proposal exceeds the height of the development with the lift overrun and the pergola protruding by 1.8m above the height requirement. This has been addressed in the previous Clause 4.6 discussion. The proposed development is three (3) storeys along the street frontage, which exceeds the two (2) storey maximum.	No – refer to previous discussion No – refer to Note 1

<p>The setback from the rear is to be determined following a detailed site analysis at development application stage and must satisfy Council that the amenity of neighbouring residential properties are protected in terms of sunlight and natural daylight access, privacy and visual amenity. Applicants must therefore demonstrate at development application stage that impacts on the residential area are minimised.</p>	<p>Figure 20 in the DCP identifies that the third storey must be setback 3m from the front boundary. The proposal does not provide that setback. This is addressed below in Note 1.</p> <p>The proposed rear setback has been addressed in the SEPP 65 discussion.</p>	Yes
<p>C6 With redevelopment of the shops, landscape planting must be provided along the rear boundary where a site adjoins a residential property, to provide a visual separation between the shops and the residential area.</p>	<p>There is a significant deep soil zone provided within the rear setback area which provides visual separation and an amenity buffer to the adjacent low density zone to the north.</p>	Yes
<p>C7 New development is to take into account and respond sympathetically to an established streetscape with strong architectural features and identity. New buildings are to reinforce these features and contribute to its character.</p>	<p>The proposed development presents a contemporary form with high quality materials that will achieve the desired future character of this area.</p>	Yes
<p>C8 Alterations and additions are to reflect the architectural design of the existing building. Materials and finishes are to be compatible with the existing building.</p>	<p>The proposal will be for a new building and not for alterations and additions to the existing building.</p>	N/A
<p>C9 Contemporary architectural design solutions are encouraged, however designs will need to demonstrate that they will not lead to a replacement or diminution of a street's existing character. Council encourages diversity in building designs provided that development outcomes</p>	<p>The development utilises a range of high quality external materials and colours. The development is sympathetic to the character of the area.</p>	Yes

complement the existing character of the suburb.		
C10 Shop top housing must be provided in any redevelopment of the existing shops.	The proposal is a new development and will incorporate a retail tenancy on the ground floor and residential on the upper levels.	Yes
C11 The design must improve the residential amenity for the housing above the shops by providing direct access to balconies and private open space; and provide for passive surveillance of the surrounding streets and pedestrian walkways.	All units have direct access to balconies from principal living areas and will provide passive surveillance on the street.	Yes
C12 All development must address the street frontage	The development has dual street frontages along Swinbourne Street and Albert Street. Residential access is off Albert Street and retail access off Swinbourne Street.	Yes
C13 All designs must provide awnings above the footpath on the Swinbourne Street frontage.	The proposal has awnings along the Swinbourne Street frontage.	Yes
C14 Awnings above the footpath are encouraged as trafficable verandahs for the use of residents on the first floor. If the verandah is built over the street then a lease fee is payable to Council. The fee is set out in Council's Fees and Charges.	This outcome is not sought by Council due to on-going legal and leasing complications.	No
C15 The design must provide good residential amenity for the housing above the shops by providing direct access to balconies and private open space; and provide for passive surveillance of the surrounding streets and pedestrian walkways.	The development has been designed to provide good amenity to the units in regard to ventilation, solar amenity and passive surveillance.	Yes
C16 The design must encourage active street life while providing a high residential amenity and provide for small scale shops that will serve the local community.	The development provides an active street frontage along Swinbourne Street and Albert Street which is supported.	Yes
C17 A street number for the property is to be clearly identifiable from the street.	A condition of consent has been imposed in this regard.	Yes

C18 Awnings must be provided continuously and at the same height along the shop frontages to provide weather protection for pedestrians.	Awnings have been provided and are consistent in height.	Yes
C19 Air conditioners must not be installed on street awnings or the front façade of buildings.	There are no air conditioners proposed on the street awning or the front façade.	Yes
C20 Development must comply with Council's sustainable development requirements as identified in Part 3H - Sustainable Design .	The application has provided a BASIX certificate which complies.	Yes
C21 Development must comply with Part 3A - Car Parking .	Complies - Refer to previous assessment addressing Part 3A – Car parking.	Yes
C22 Maintain limited advertisements and business signage to minimise visual impact on the surrounding residential area.	There is no signage proposed as part of the application.	N/A
C23 Restrict signage to the awning fascia, under the awning or behind the shop window at street level	There is no signage proposed at this stage.	N/A
C24 Development must comply with Part 3D - Signage	There is no signage proposed at this stage.	N/A
C25 A Stormwater Management System is to be provided in accordance with Part 3G - Stormwater Management .	Stormwater management complies with the requirements under Part 3G of the BBDCP.	Yes

Note 1 – Front setback/Number of storeys

Figure 20 specifies a 3m front setback and restricts development to two (2) storeys along the street frontage. See below:

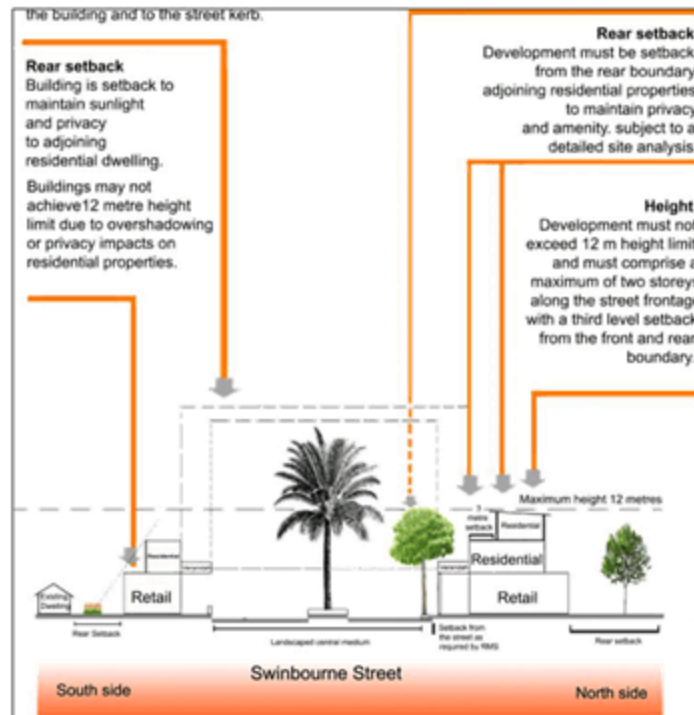


Figure 12 – Extract of Figure 20 in Part 5.2.2.5 of BBDCP 2013

The proposed development encroaches into the 3m front setback area, however it utilises architectural design and elements to give the appearance of a greater setback, when viewed from the street. The following is noted in this regard:

- The roof form of the upper level along the Swinbourne Street frontage is visually recessive and varies in colour from the remainder of the development;
- There are a series of vertical elements along the front façade which have been setback from the boundary alignment; and
- The Design Review Panel are supportive of the setback as proposed.

The comments made above are demonstrated in the perspective below:

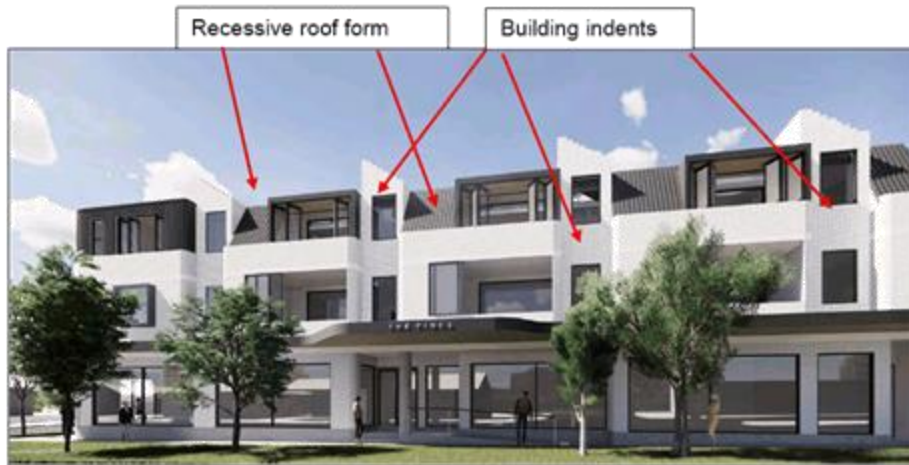


Figure 13: Photomontage along Swinbourne Street

Note 2 – Lot consolidation/site isolation

Control C3 within Part 5.2.2.5 of BBDCP 2013 stipulates the following:

C3 Redevelopment is encouraged through logical lot consolidation of sites and infill development. Avoid inappropriate lot consolidation patterns that would isolate and unreasonably restrict redevelopment on a single lot.

The development is proposed to be constructed over four (4) existing lots which creates a site area of 1225m². The proposal would however potentially isolate the adjoining allotment to the east at No.19 Swinbourne Street, noting that an approval for a three (3) storey mixed use development has been issued at No.21 Swinbourne Street (that being the easternmost lot on the corner). Refer to map below for reference:

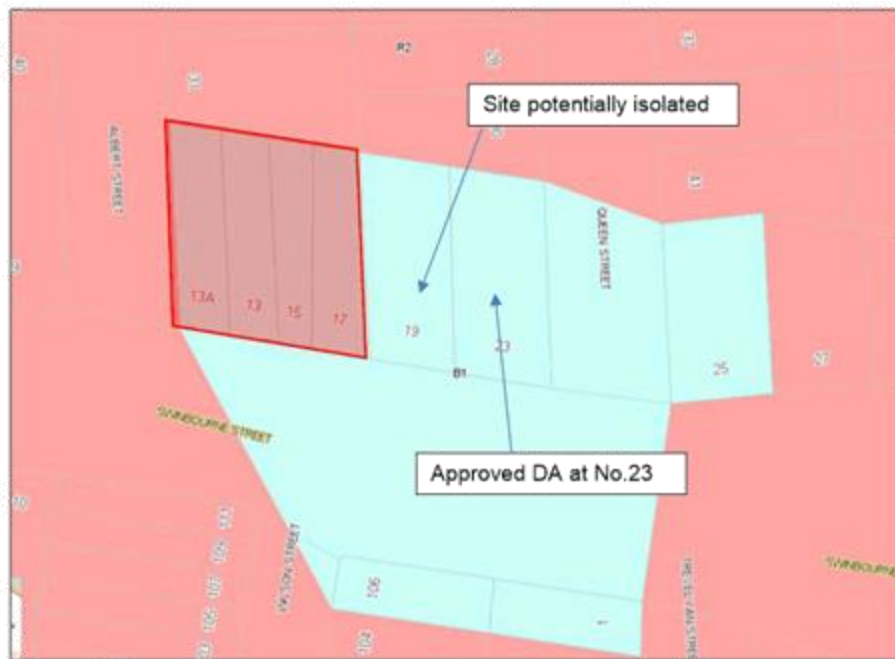


Figure 14: Site isolation diagram

The applicant has provided detailed information to demonstrate that the relevant court principles concerning site amalgamation and/or site isolation (*Karavellas v Sutherland Shire Council* [2004] NSWLEC 251) have been complied with. Council is satisfied that these requirements have been reasonably met. The applicant has provided evidence (between the period of 24 May 2018 up until April/May 2019) of genuine attempts to purchase No.19 Swinbourne Street. This includes dialogue between the owner/agent of No.19, the developer, solicitors and real estate agents. To date, the sale of No.19 has unable to be secured by the proponent of the subject proposal. In view of this, the applicant has presented indicative concept plans to demonstrate how No.19 Swinbourne Street could be re-developed. The proposal would not preclude this allotment from re-developing in accordance with the applicable planning proposals.

Importantly, the proposed car parking arrangements (basement and ground floor) have been designed in a manner which would enable the provision of a future access link into the rear of the allotment at No.19 Swinbourne Street. Extracts of the concept plans provided are reproduced below:



Figure 15: Isolated site plans



Figure 16: Isolated site plans



Figure 17: Isolated site plans



Figure 18: Isolated site plans

The remainder of the relevant General Controls within Part 5.3 – Business Centres are addressed below:

5.3 General Controls		
5.3.1.1 Floor Space Ratio	C2 In determining an appropriate FSR, applicants must demonstrate to Council that the bulk and scale of development is acceptable and will not result in adverse impacts on adjoining dwellings or the streetscape in terms of loss of privacy, overshadowing, loss of views, visual amenity and increased traffic generation.	The maximum permissible FSR for the subject site is 1.5:1. The development complies with this requirement.
5.3.1.2 Height	C1 The maximum height of buildings must comply with the Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.	A maximum height of 12 metres applies to the subject site. The maximum height of the development does not comply with Council's requirements under the Botany Bay Local Environmental Plan 2013. A Clause 4.6 variation was provided with the application and is discussed elsewhere in this report.
	C2 & C3 In addition to C1, new buildings must also consider and respond to the predominant and characteristic height of buildings within the Centre; and consider the topography and shape of the site. In this regard, the maximum number of storeys must not exceed the maximum number of storeys identified in the relevant character statement for each Business Centre as set out in Part 5.2 - Character Statements for the Business Centres. If the maximum number of storeys is not identified in the Character Precinct, the maximum number of storeys must be	The proposal is consistent with the desired future character of the area.

	consistent with the characteristic building height.	
5.3.1.5 Built Form and Streetscape	C2 Building must have a consistent street wall height and provide a continuous street frontage and awning height along the street frontage where appropriate.	The development is one of the first site to be redeveloped in the area therefore there is no existing street wall height however the development achieves with the desired future character.
5.3.2.1 Design Excellence	C2 The Development Application must identify how design excellence will be achieved in the proposed development.	The applicant has provided a SEPP 65 Design Verification Statement with the development application. The document addressed the design excellence of the proposed development.
5.3.2.2 Building Design	C2 All development applications that contain residential development or are adjacent to residential development must provide a design statement addressing privacy and overshadowing of residential dwellings from the business component.	The applicant has provided a SEPP 65 Design Verification Statement with the development application.
	C4 If residential dwellings are proposed as part of a mixed use development, balconies, private open space area and communal open space areas must be screened to address any privacy impacts on adjoining residential properties.	The balconies have been designed to overlook the street where possible. There are some balconies facing north towards the R2 sites, however these incorporate screening devices to ensure that overlooking impacts are minimised. The roof top communal area is well setback from the rear boundary.
	C7 A schedule of external finishes and materials must be submitted at development application stage to articulate the building's design complements the Business Centre.	A Schedule of Colours and Finishes has been provided with the development application.
5.3.2.4 Awnings and Verandahs	C1 New development must provide awnings above the footpath to	The development proposes an awning on the ground floor.

	provide weather protection for pedestrians.	
5.3.2.5 Public Domain Interface at Ground Level	C1 Development must comply with the Desired Future Character objectives and controls identified in Part 5.2 - Character Statements for the Business Centres.	This is discussed above in the report.
	C2 Development must be designed so that it has a clearly definable entry and addresses the street.	The building addresses Swinbourne Street (retail entry) and Albert Street (residential entry).
	C3 For mixed use development which contains residential dwellings, the primary area of outdoor private open space must not be located on the street frontage, unless it is on the first floor or above.	All apartments are located on Level 1 and above and private open space is via balconies. All units have access to a communal open roof terrace.
	C4 The visual and physical connection between the building frontage and the public domain must be considered in all development applications to ensure that the interface at ground level promotes a high level of pedestrian amenity.	Council's Landscape Architect has conditioned that a Public Domain Plan is required prior to the Construction Certificate.
5.3.2.6 Active Street Frontages	C1 Development is to provide active street frontages in accordance with the Active Street Frontages Map and Clause 6.15 Active Street Frontages under BBLEP 2013.	The development provides an active street frontage on the ground floor.
5.3.2.8 Interface between Business Zones and Adjoining Landuses	C1 Clear boundaries between the public and private domain must be created to enhance security, privacy and safety.	Clear boundaries are demonstrated by separate entries to the residential and commercial components as well as to the car parking area.

	C2 Shadow diagrams must be provided for all development proposals for the summer and winter solstices. Shadow diagrams must show shadow impacts at 9am, 12 noon and 3pm for both solstices. Additional building setbacks may be required where internal site shadow impacts or impacts on adjoining properties are considered by Council to be unreasonable.	The site has a north-south orientation therefore a majority of the shadow cast by the proposed development will be to Swinbourne Street. The applicant has provided shadow diagrams demonstrating the proposed development will not cause any adverse overshadowing impacts.
5.3.2.9 Landscaped Area	C1 Residential setbacks from streets and parks are to support planting, at a scale that allows passive surveillance of the public domain. This requirement may vary with each block	There is no residential on the ground floor. However there is a landscaped buffer located on the northern side of the site between the residential property and subject site. There is no planting along the street frontage due to active frontages.
5.3.2.10 Private Open Space and Communal Open Space	C1 The primary area of outdoor private open space must not be located at grade on the street frontage.	There is no residential proposed at grade. All private open space is off a balcony.
	C2 Communal open space can be provided at grade or on podiums and roof tops. The space must be appropriately landscaped and provided with a recreational facilities or features, for example BBQ area, seating, children's play area, landscape features or the like and must include pedestrian scale lighting, to be shown in the detailed landscape plan.	The communal open space is located on rooftop and will be appropriately landscaped as well as providing for, seating, BBQ area and planter beds.
	C3 More than 70% of the communal open space area must be capable of growing plants, grasses and trees.	As the communal terrace is located on the rooftop, the space will receive full sunlight.

5.3.2.11 Materials and Finishes	C1 A Schedule of Finishes and a detailed Colour Scheme for the building facade is to accompany all Development Applications involving building works	A Schedule of Colours and Finishes has been provided with the development application.
5.3.2.12 Servicing	C1 New commercial or mixed use buildings must provide a loading dock on-site. Where this is not viable loading and unloading may be permitted from to a rear lane or side street subject to Council's engineer approval.	There is a loading space provided within the car parking area on the ground floor.
5.3.2.14 Access and Mobility	<p>C1 Development must comply with Part 3C – Access and Mobility</p> <ul style="list-style-type: none"> ▪ Residential flat buildings (RFB), conversion of non-residential buildings into RFBs, shop top housing, multi dwelling housing and live/work buildings – Statement of consistency lodged. ▪ In developments containing 10 or more dwellings, a minimum of 20% of the dwellings are to be adaptable dwellings designed in accordance with Adaptable Housing Australian Standard 4299 Class B. Refer to AS4299 Class B. ▪ Appropriate access for all persons through the principal entrance of a building and access to all common facilities. Refer to BCA and AS1428.1. ▪ In developments containing 10 or more dwellings, accessible 	<p>An Access Report has been prepared and provided with the development application.</p> <p>The development proposes four (4) adaptable units.</p> <p>Appropriate access through the front entrance and through the building is provided.</p> <p>The development proposes three (3) adaptable parking spaces.</p>

	<p>resident parking is required at 10% to be allocated to adaptable dwellings with a preference for AS4299 designs for at least 80% of the accessible spaces and a maximum of 20% of spaces complying with AS2890.6.</p>	
5.3.3.1 Acoustic Privacy	<p>C1 Dwellings close to high noise sources such as busy roads, railway lines and airports must be designed to locate noise sensitive rooms and secluded private open spaces away from noise sources and be protected by appropriate noise shielding techniques.</p>	<p>The site is located outside of the ANEF Contour area and is not in close proximity to a busy road.</p>
5.3.3.2 Visual Privacy	<p>C1 In some cases potential visual privacy impacts can be mitigated by incorporation of one or more of the following design measures:</p> <ul style="list-style-type: none"> (i) Fixed screens of a reasonable density (min 75% block out); (ii) Fixed windows with translucent glazing (providing natural ventilation is not compromised); (iii) Appropriate screen planting or planter boxes. 	<p>Refer to discussion below regarding the proposed visual privacy outcomes.</p>
5.3.3.5 Solar Access & Shadow	<p>C1 Development must demonstrate:</p> <ul style="list-style-type: none"> (i) Neighbouring developments will obtain at least two hours of direct sunlight to 50% of the primary private open space and 50% of windows to habitable rooms; and (ii) 30% of any common open space will 	<p>The site has a north-south orientation therefore a majority of the shadow cast by the proposed development will be to Swinbourne Street. No further concerns are raised in this regard.</p> <p>The communal open space on the roof top will receive full sunlight.</p>

	obtain at least two hours of direct sunlight between 9am and 3pm on 21 June.	
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Visual privacy discussion

The site adjoins the R2 – Low Density Residential zone at the rear (to the north) in Albert Street. During the assessment of the application, Council requested the applicant to revise the treatment of the northern façade to ensure that overlooking opportunities from the rear balconies are minimised. Given this is the northern façade of the building, there needs to be an equitable balance of facilitating solar access into the proposed apartments whilst reasonably preserving the visual privacy of the adjacent residential dwellings.

The rear northern balconies incorporating sliding, full height and closely spaced timber batten screens as well as horizontal and vertical privacy blades which are designed to minimise overlooking on oblique angles. It is noted that there is a proposed development for the constructed of two storey semi-detached dwellings on the adjoining site to the north at No.31 Albert Street. The proposed first floor southern elevation of the development is relatively blank with window openings being restricted.

The proposed development is considered to satisfy Part 5.3.3.2 of BBDCP 2013 concerning visual privacy.



Figure 19 - Photomontage of northern elevation showing privacy devices

Part 8 – Botany Character Precinct

While Part 8 contains general objectives for the future character of the Botany Area, Part 5 of the BBDCP contained specific controls and objectives for the desired future character of the Swinbourne Street Neighbourhood Centre which has been addressed in detail above.

S.4.15(1)(a)(iv) - Provisions of regulations

The proposed development is not inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

S.4.15(1)(b) - Likely Impacts of Development

As outlined in the assessment above, the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

S.4.15(1)(c) - Suitability of the site

The site is located in a groundwater management zone and is proposing basement level. The applicant has provided geotechnical reports demonstrating that the development will encounter groundwater. Appropriate conditions imposed by Water NSW has been provided in the consent. The issue of likely site contamination has been considered, however, given the nature of the development, and the long-standing use of the land for residential purposes, onsite investigation is not warranted.

The proposed development is permissible in the zone and satisfies the objectives of the zone. The traffic impacts are not considered to be significant given the relatively small scale of the development and no significant planning issues are raised that would warrant the refusal of the proposed development.

S.4.15(1)(d) - Public Submissions

- **7 January 2019 to 30 January 2019** – The application was notified and advertised in accordance with BBDCP 2013. Two (2) submissions were received.
- **10 April 2019 to 21 May 2019** – The application was re-notified due to it being identified as constituting Integrated Development. One (1) submission was received.

The concerns raised in the submissions have been addressed below:

Concern: Insufficient amount of car parking provided. Adverse traffic impacts.

Comment: The amount of car parking provided complies with the BBDCP 2013 requirements. Council's Development Engineer has reviewed the proposal on traffic grounds and it is considered that the proposal will not generate unacceptable traffic impacts that would warrant refusal of the DA.

Concern: The developer/Council should consider adding 45 degree angle parking outside the proposed development area in Albert Street as well as out the front on Swinbourne Street.

Comment: The existing vehicular crossings along Swinbourne Street will become redundant and are required to be re-instated. This will result in the provision of some additional on-street car parking spaces. It is noted that the proposed development does not preclude the establishment of potential future on-street car parking along Albert Street. This would however be subject to a separate approval process outside of this DA.

Concern: There is no need for additional apartments in the area. The development would look out of place with the rest of the area. There are not apartment buildings more than 2 storeys.

Comment: The external appearance of the development is acceptable given that this particular area is anticipated to transition to new building forms, given the applicable planning controls. The LEP height is 11m, which therefore anticipates a 3 storey form.

Concern: DA site signs were not provided.

Comment: The appropriate DA notification signs were provided along the Swinbourne Street frontage during both notification periods.

S.4.15(1)(e) - Public interest

It is considered that granting approval to the proposed development will be in the public interest.

Section 7.11 Contributions

A Section 7.11 contribution \$320,000.00 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012 (the \$20,000 cap). Suitable conditions have been included.

Conclusion

Bayside Council received Development Application No.2018/378 on 20 December 2018 seeking consent for the demolition of the existing structures and construction of a three (3) storey shop top housing development comprising one (1) ground floor commercial tenancy, 20 dwellings, basement and ground floor parking and strata subdivision at 13A-17 Swinbourne Street, Botany.

The applicant has provided amended plans and other supporting material to address the concerns raised by Council. The non-compliant aspects of the development are considered to be acceptable for reasons identified within the main body of the report. However, minor design changes are recommended to ensure that the quantum of communal open space achieves the minimum requirements set out within Part 3D of the ADG.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, subject to conditions of consent.

Attachment

Schedule 1 – Conditions of Consent

Premises: 13A-17 Swinbourne Street, Botany

DA No: 2018/378

GENERAL CONDITIONS

- The development is to be carried in accordance with the following plans listed below and endorsed with Council's stamp, except where amended by other conditions of this consent.

Drawing No.	Author	Date Received
DA-006-2 Issue C Demolition works	Architects Nicholas + Associates	Dated: 05.08.19 Received: 07.08.19
DA-007 Issue F Site Plan		Dated: 05.08.19 Received: 07.08.19
DA-008 Issue F Streetscape Analysis		Dated: 05.08.19 Received: 07.08.19
DA-009 Issue F Standard Abbreviations		Dated: 05.08.19 Received: 07.08.19
DA-010 Issue M Basement Plan		Dated: 05.08.19 Received: 07.08.19
DA-011 Issue O Ground Floor Plan		Dated: 05.08.19 Received: 07.08.19
DA-012 Issue M First Floor Plan		Dated: 05.08.19 Received: 07.08.19
DA-013 Issue M Second Floor Plan		Dated: 05.08.19 Received: 07.08.19
DA-014 Issue L Roof Plan		Dated: 05.08.19 Received: 07.08.19
DA-030 Issue F Locations of Adaptable units		Dated: 05.08.19 Received: 07.08.19
DA-031 Issue G Adaptable apartment 1.10		Dated: 05.08.19 Received: 07.08.19
DA-032 Issue G		Dated: 05.08.19 Received: 07.08.19

Adaptable apartment 1.03/2.03		
DA-033 Issue F Adaptable unit 1.08		Dated: 05.08.19 Received: 07.08.19
DA-150 Issue I Swinbourne St Elevation		Dated: 05.08.19 Received: 07.08.19
DA-151 Issue H Albert St Elevation		Dated: 05.08.19 Received: 07.08.19
DA-152 Issue G North Elevation		Dated: 05.08.19 Received: 07.08.19
DA-153 Issue F East Elevation		Dated: 05.08.19 Received: 07.08.19
DA-160 Issue I Section AA		Dated: 05.08.19 Received: 07.08.19
DA-161 Issue H Section BB		Dated: 05.08.19 Received: 07.08.19
DA-162 Issue H Section CC		Dated: 05.08.19 Received: 07.08.19
DA-950 Issue G Finishes Schedule		Dated: 05.08.19 Received: 07.08.19
DA-163 Issue G Section DD		Dated: 05.08.19 Received: 07.08.19
Cover Page LDA000 Revision F	NBRS Architecture	Dated: 25.07.19 Received: 07.08.19
Landscape Plan 01 Ground Floor LDA100 Revision F		Dated: 25.07.19 Received: 07.08.19
Landscape Plan 02 First Floor LDA101 Revision E		Dated: 18.07.19 Received: 07.08.19
Landscape Plan 03 Roof Terrace LDA102 Revision E		Dated: 18.07.19 Received: 07.08.19
Sections LDA200 Revision E		Dated: 18.07.19 Received: 07.08.19
Planting Palette, Schedule and Details LDA300		Dated: 25.07.19 Received: 07.08.19

Revision F		
Materials and Finishes LDA400		Dated: 18.07.19 Received: 07.08.19
Revision E		
Plan of proposed subdivision of lots Basement Level and Below	Surveyor: Ivan Victor Sterligov	Dated: 21.08.19 Received: 23.08.19
Plan of proposed subdivision of lots Ground Level		Dated: 21.08.19 Received: 23.08.19
Plan of proposed subdivision of lots Level 1 and above		Dated: 21.08.19 Received: 23.08.19

Reference Document(s)	Author	Date Received
Arborist Report	Urban Arbor	Dated: 26.07.19 Received: 07.08.19
Geotechnical investigation and Acid Sulfate Soil Assessment	STS GeoEnvironmental	Dated: June 2019 Received: 07.08.19
Preliminary Soil Vapour & Groundwater Investigation	Environmental Consulting Services	Dated: 30.04.19 Received: 07.08.19
BASIX Certificate No.982828M	Prepared by Building Sustainability Assessments	Dated: 11.12.18 Received: 20.12.18
Flood Management Report	Endepth Engineers Pty Ltd	Dated: 10.07.19 Received: 07.08.19
Access Report	Wall to Wall	Dated: 20.12.18 Received: 20.12.18

2. This consent relates to land in Lot A DP399233, Lot B DP399233, Lot 1 DP212569 and Lot 2 DP212569 and, as such, building works must not encroach on to adjoining lands or the adjoining public place.
3. The materials and façade details approved under condition 1 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S4.55 application and approval under the EP&A Act.
4. Separate approval shall be provided for the use of the commercial/retail tenancy on the ground floor.
5. In order to ensure the design quality excellence of the development is retained:
 - i. A registered architect is to have direct involvement in the design documentation, contract documentation and construction stages of the project;
 - ii. The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of design issues throughout the life of the project;
 - iii. Evidence of the design architect's commission is to be provided to Bayside Council prior to issue of the Construction Certificate.

The design architect of the project is not to be changed without prior notice and approval of Bayside Council.

6. The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:
 - a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems (including installation) proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the relevant requirements of the NCC; and
 - b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.
7. The following shall be complied with:
 - a) All building work must be carried out in accordance with the provisions of the Building Code of Australia;
 - b) All air conditioning units shall be appropriately treated to ensure that they are concealed from view and compliant with Australian Standard AS1668.2. If they are located on balconies or in public, they are to be appropriately screened;
 - c) The provision of disabled access throughout the development is required and shall be in compliance with the Building Code of Australia Part D3 "Access for People with Disabilities" and Australian Standard AS1428.1 (2001) – Design for Access and Mobility – Part 1 General Requirements for Access – Buildings. This requirement shall be reflected on the Construction Certificate plans;
 - d) The off-street parking areas associated with the subject development shall be designed strictly in accordance with AS2890.1:2004;
 - e) Bicycle parking facilities shall be designed in accordance with AS2890.3:1993; and
 - f) Internal height clearance shall be designed throughout the car park and access driveway in accordance with AS2890.1:2004.
8. Pursuant to clause 97A(3) of the *Environmental Planning & Assessment Regulation 2000*, it is a condition of this development consent that all the commitments listed in the relevant BASIX Certificates (as referenced at Condition No. 1) for the development are fulfilled.

Note:

 - a) Relevant BASIX Certificate means:
 - i) A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under Section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - ii) If a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate.
 - b) BASIX Certificate has the meaning given to that term in the *Environmental Planning and Assessment Regulation 2000*.

9. The consent given does not imply that works can commence until such time that:
- a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by:-
 - i) The consent authority; or,
 - ii) An accredited certifier; and
 - b) The person having the benefit of the development consent:-
 - i) Has appointed a principal certifying authority; and
 - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and
 - iii) The person having the benefit of the development consent has given at least 2 days notice to the council of the persons intention to commence the erection of the building.

CONDITIONS IMPOSED BY EXTERNAL AUTHORITIES

10. The following conditions imposed by **Sydney Airport (SACL)** are as follows:

- a) This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.
- b) No objection has been raised to the erection of this development to a maximum height of 22.0 metres AHD.
- c) The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.
- d) Should you wish to exceed this height a new application must be submitted.
- e) Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.
- f) Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.
- g) Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.
- h) "Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).
- i) The height of the prescribed airspace at this location is 51 metres above AHD.

11. The following conditions imposed by **Sydney Water** are as follows:

- a) The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.
- b) The Sydney Water Tap in™ online self-service replaces our Quick Check Agents as of 30 November 2015.
The [Tap in™](#) service provides 24/7 access to a range of services, including:
 - i) building plan approvals
 - ii) connection and disconnection approvals
 - iii) diagrams
 - iv) trade waste approvals
 - v) pressure information
 - vi) water meter installations

- vii) pressure boosting and pump approvals
 - viii) changes to an existing service or asset, e.g. relocating or moving an asset.
- c) A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design. Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

12. The following conditions imposed by **Ausgrid** are as follows:

- a) **Proximity to Existing Network Assets – Overhead Powerlines**
 There are existing overhead electricity network assets in Swinbourne St and Albert St. Safework NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website, www.ausgrid.com.au.

Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost. It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected to be entering and leaving the site.

- b) **Underground Cables**
 There are existing underground electricity network assets in Swinbourne St and Albert St. Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid’s Network Standard NS156 outlines the minimum requirements for working around ausgrid’s underground cables.

13. The following conditions imposed by **Water NSW** are as follows:

General Terms of Agreement

- a) A Water Supply Work Approval from WaterNSW must be obtained prior to commencing dewatering activity on the proposed site. Please complete an Application for approval for water supply works, and/or water use.
- b) An application for a Water Supply Works Approval will only be accepted upon receipt of supporting documentation, and payment of the applicable fee (see

Application fees for New or amended Works and/or Use Approvals). The information required for the processing of the water supply work application may include preparation of a dewatering management plan. Please refer to checklist attached.

- c) If approved, the Approval will be issued for a period of up to 24 months to cover the dewatering requirements during the construction phase. It will include conditions to ensure that impacts are acceptable and that adequate monitoring and reporting procedures are carried out. The Approval will be issued subject to the proponent meeting requirements of other agencies and consent authorities. For example, an authorisation by either Sydney Water or the local Council, depending where the water will be discharged. If contaminants are likely, or are found to be present in groundwater, and are being discharged to stormwater, including high salinities, a discharge licence under the Protection of the Environment Operations Act 1997 (NSW) may also be required.
- d) WaterNSW prefers "tanking" (ie. total water proofing below the seasonal high water table) of basement excavations, and avoids the ongoing extraction of groundwater after the initial construction phase. It is also advised to adopt measures to facilitate movement of groundwater post construction (eg. a drainage blanket behind the water-proof membrane).
- e) If the basement is not "tanked", the proponent will require a Water Access Licence (WAL) and need to acquire groundwater entitlements equivalent to the yearly ongoing take of groundwater. Please note: Acquiring groundwater entitlements could be difficult, and may cause delay in project completion. If a WAL is required, please complete an Application for a new water access licence with a zero share component.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE COMMENCEMENT OF ANY DEVELOPMENT OR WORK

- 14. A dilapidation report, including a photographic survey prepared by a Practising Structural Engineer, shall be undertaken of all properties and Council infrastructure, including but not limited to all buildings, footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
- 15. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter and obtained the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993:

(It should be noted that any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.)

- Permit to erect hoarding on or over a public place, including Council's property/road reserve,
- Permit to construction works, place and/or storage building materials on footpaths, nature strips,
- Permit to install temporary ground anchors in public land,
- Permit to discharge ground water to Council's stormwater drainage system,

- Permit for roads and footways occupancy (long term/ short term),
 - Permit to construct vehicular crossings, footpaths, kerbs and gutters over road reserve,
 - Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever, such as relocation / re-adjustments of utility services,
 - Permit to place skip/waste bin on footpath and/or nature strip, and
 - Permit to use any part of Council's road reserve, work zone or other Council lands.
 - Permit to stand mobile cranes and/or other major plant on public roads and all road reserve area. It should be noted that the issue of such permits may involve approval from RMS and NSW Police. In some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.
16. Erosion and sediment control devices shall be installed and in function prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
17. A Soil and Water Management Plan shall be prepared in accordance with Soil and Water Management for Urban Development Guidelines produced by the Southern Sydney Region Organisation of Councils. A copy of the plan must be submitted to Council. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request. Sediment control devices shall not be located beneath the driplines of trees, which are to be retained.
18. The vehicular entry/exits to the site must be protected from erosion and laid with a surface material which will not wash into the street drainage system or watercourse.
19. For any water from site dewatering to be permitted to go to the stormwater, the water must meet the relevant default guideline values (DGVs) under the Australian & New Zealand Guidelines for Fresh & Marine Water Quality. The results of all testing must be completed by a NATA accredited laboratory.

All laboratory results must be accompanied by a report prepared by a suitably qualified person indicating the water meets these guidelines and is acceptable to be released into council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater must be provided in this report.

Reports must be provided to council prior to discharge of any groundwater to the stormwater system.

20. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to council's stormwater system a permit to discharge to the stormwater shall be obtained from Council. Dewatering shall not commence until this is issued by Council.
21. Prior to the commencement of works, the applicant must inform Council, in writing, of:
 - a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
 - b) The name and permit number of the owner-builder who intends to do the work;
 - c) The Council also must be informed if: -
 - i) A contract is entered into for the work to be done by a different licensee; or
 - ii) Arrangements for the doing of the work are otherwise changed.
22. Prior to the commencement of works, a dilapidation survey shall be undertaken of all properties and/or Council infrastructure, including but not limited to all footpaths, kerb and gutter, stormwater inlet pits, and road carriageway pavements, in the vicinity which could be potentially affected by the construction of this development. Any damage caused to other properties during construction shall be rectified. A copy of the dilapidation survey and an insurance policy that covers the cost of any rectification works shall be submitted to the Accredited Certifier (AC) or Council prior to Commencement of Works. The insurance cover shall be a minimum of \$10 million.
23. Prior to the commencement of works, separate permits are required to be obtained and approved by Council for all works including but not limited to road opening, road and footpath closure, stand and operate a registered vehicle or plant, occupy road with unregistered item, work zone, hoarding, shoring support (anchoring), tower crane operation, public land access, temporary dewatering, and any excavation and works proposed to be undertaken on public land.
24. The site to which this approval relates must be adequately fenced or other suitable measures employed that are acceptable to the Principal Certifying Authority to restrict public access to the site and building works. Such fencing or other measures must be in place before the approved activity commences.
25. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
26. If the land to which the application relates is served by a common sewerage system that is also used by others, then measures must be placed in effect and prior to the commencement of work to ensure the operation of the sewerage system is without disruption to other joint users.
27. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
 - a) Must preserve and protect the building/ fence from damage; and,
 - b) If necessary, underpin and support such building in an approved manner;
 - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;

- d) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - e) If the soil conditions required it:
 - i. Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
 - ii. Adequate provision must be made for drainage.
28. Prior to the commencement of demolition work a licensed demolisher who is registered with WorkCover NSW must prepared a Work Method Statement to the satisfaction of the Principal Certifying Authority (Council or an accredited certifier) and a copy shall be sent to Council (if it is not the PCA). A copy of the Statement shall also be submitted to WorkCover NSW.

The statement must be in compliance with AS2601:1991 – 'Demolition of Structures', the requirements of WorkCover NSW and conditions of the Development Approval, and shall include provisions for:

- a) Enclosing and making the site safe, any temporary protective structures must comply with the "Guidelines for Temporary Protective Structures (April 2001)";
- b) Induction training for on-site personnel;
- c) Inspection and removal of asbestos, contamination and other hazardous materials (by appropriately licensed contractors);
- d) Dust control – Dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding, combined with chain wire and shade cloth must be used, together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the building site;
- e) Disconnection of Gas and Electrical Supply;
- f) Fire Fighting – Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services in the street must not be obstructed;
- g) Access and Egress – No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
- h) Waterproofing of any exposed surfaces of adjoining buildings;
- i) Control of water pollution and leachate and cleaning of vehicles tyres – Proposals shall be in accordance with the "Protection of the Environmental Operations Act 1997";
- j) Working hours, in accordance with this Development Consent;
- k) Confinement of demolished materials in transit;
- l) Proposed truck routes, in accordance with this Development Consent;
- m) Location and method of waste disposal and recycling in accordance with the "Waste Minimisation and Management Act 1995".
- n) Sewer – common sewerage system ad08.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

29. Prior to the issue of a Construction Certificate, construction details of all proposed planter boxes in the development in particular the corten steel planters proposed on roof level, FFL 18.25, as indicated in approved architectural plan drawing DA014 prepared by Architects Nicholas + Associates, issue L, dated 05th August 2019 shall be submitted

to Bayside Council Landscape Architect for approval. The applicant shall prove that the proposed corten steel planters proposed in architectural and landscape plans are capable of holding the projected planting. Otherwise an alternative construction method shall be proposed.

30. The final landscape plan shall be generally in accordance with the approved landscape plan (refer to condition 1) and comprise detailed landscape construction documentation (plans and specifications) to be submitted to, and approved by Bayside Council's Landscape Architect prior to the issue of a Construction Certificate. The landscape documentation shall include, but not be limited to:
 - a) A planting plan at 1:100 showing all plant locations/groupings and plant centres/species. There is to be a dense layered planting scheme consisting of trees, shrubs and groundcovers in all of these areas.
 - b) Elevated planter box sectional details and drainage details. All planter box depths and dimensions shall be in accordance with Council's DCP and capable of supporting medium and large trees.
 - c) Indicate the location of all basement structures relative to the landscape areas.
 - d) Specifications detailing soil and mulch finishes, root barriers, irrigation, edging and other landscape handworks such as retaining walls, steps, planter walls, feature walls, skateboard restrictions, tree pits, tree grates, tree guards, tree pit treat
 - e) Areas of paving, schedule of materials, edge treatments, tactile and sectional construction details.
 - f) Irrigation details in all planting proposed on slabs.
 - g) A Landscape Maintenance Schedule shall be submitted that covers a 12 month period to provide a guide to the landowner or occupier on how to best maintain the constructed landscaped areas; and include the following information: shrub pruning/trimming (frequency, plant requirements); Fertilising and pest control (soil testing, types, rate, frequency); Mulching, weeding and soil improvement (frequency, materials); Irrigation (checks, adjustments); tree maintenance (fertilising, mulching, tree stakes adjustments, special tree requirements); Maintenance of hard landscape elements (paving, edges, walls, pergolas, seats, and planter box walls); and planter boxes/roof gardens/green wall (specialised maintenance requirements).
31. Planter boxes constructed over a concrete slab shall be built in accordance with the following requirements:
 - a) Ensure soil depths in accordance with Council's Landscape DCP. The base of the planter must be screeded to ensure drainage to a piped internal drainage outlet of minimum diameter 90 mm, with no low points elsewhere in the planter. There are to be no external weep holes.
 - b) A concrete hob or haunch shall be constructed at the internal join between the sides and base of the planter to contain drainage to within the planter.
 - c) Planters are to be fully waterproofed and sealed internally with a proprietary sealing agent and applied by a qualified and experienced tradesman to eliminate water seepage and staining of the external face of the planter. All internal sealed finishes are to be sound and installed to manufacturer's directions prior to backfilling with soil.
 - d) An inspection of the waterproofing and sealing of edges is required by the
 - e) Certifier prior to backfilling with soil.
 - f) Drainage cell must be supplied to the base and sides of the planter to minimize damage to the waterproof seal during backfilling and facilitate drainage. Apply a proprietary brand filter fabric and backfill with an imported lightweight soil suitable

- for planter boxes compliant with AS 4419 and AS 3743. Install drip irrigation including to lawns.
- g) Finish externally with a suitable paint, render or tile to coordinate with the colour schemes and finishes of the building.
 - h) All planter boxes shall be irrigated, and shall have the required depth to sustain the proposed plant species.
32. The private open space areas 2.01, 2.02 and 2.10 on the Roof level plan must be deleted (including the stairs from each of the respective apartments) and substituted as communal open space. Amended plans demonstrating compliance with this condition shall be provided to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.
33. Prior to the issue of a Construction Certificate, at the proposed point of construction site entry, photographic survey showing the existing conditions of Council's and RMS infrastructure shall be submitted to Council and Principal Certifying Authority. The survey shall detail the physical conditions and identify any existing damages to the roads, kerbs, gutters, footpaths, driveways, street trees, street signs and any other Council assets fronting the property and extending to a distance of 50m from the development. Failure to do so may result in the applicant/developer being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost
34. Prior to the issue of a Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to the Principal Accredited Certifier for assessment and approval. Design certification and drainage design calculations are to be submitted with the plans. Botany Bay DCP Part 10— Stormwater Management Technical Guidelines (SMTG) sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the site, including the final discharge/end connection point, must comply with Botany Bay DCP Part 3G and Part 10— Stormwater Management Technical Guidelines. All drawings shall correspond with the approved architectural plans.

The detailed design plans shall incorporate, but not be limited to, the following:

- Incorporate the provisions generally made in the stormwater management plans prepared by LP Consulting Australia PTY LTD, Job No 2018-1533, Issue C, dated 25.07.19 with the revisions specified below, and
- The On-Site Infiltration System shall be designed according to Part 5 of the SMTG and shall be designed to detain and absorb all runoff generated by the development for all storm events up to and including the 1% Annual Exceedance Probability (AEP) design storm events, and for all durations from 6 minutes to 72 hours inclusive, and
- The onsite infiltration system is to be designed to ensure that adequate access for maintenance is available. An absorption tank system will be a more preferable design for the development to provide for maintenance access, and
- The infiltration system must have a minimum 2.0m setback from any adjacent private property boundary. Any part of the proposed building within 3m of the proposed infiltration system shall be designed with consideration for the close proximity of the infiltration system, and
- All subsurface structures must be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. Subsoil drainage around the subsurface structure must allow

free movement of groundwater around the structure and must not be connected to the internal drainage system, and

- A pump-out system shall be provided for the basement, and
- In accordance with Botany Bay DCP SMTG section 4, a minimum capacity 10000L of Rainwater Tank(s) shall be provided for the site. The rainwater tank(s) must be connected all toilets, the cold water tap that supplies each clothes washer in the development and any outdoor taps/landscape irrigation within the development. In order to reduce pollutants entering the tank, a first flush device to divert minimum 1mm initial runoff from the roof area bypassing the tank shall be provided. Overflow from the rainwater tank shall be directed to the site drainage system, and
- Detailed calculations including computer modelling supporting the proposal.

35. Prior to the issue of a Construction Certificate, details of the approved street awning, including plans and sections, must be provided to the Certifying Authority for assessment and approval. The awning shall be consistent with the approved development application plans.

The details must include:

- a) A minimum setback of 600mm from the face of the kerb, minimum Fascia height 600mm, minimum soffit height 3.3m for sloping sites maximum step of 900mm. The awnings must be entirely self-supporting; posts are not permitted, and
- b) All stormwater is to be collected and connected to the street gutter. In this regard awning downpipes for drainage are to be fully concealed within or recessed into the ground floor frontage of the building. Awning gutters are to be constructed so that they are not visible from the footpath or are integral to the awning structure, and
- c) The design and certification by a Structural Engineer for Roof Category R1 in accordance with AS/NZS 1170.1: 2002, AS/NZS 1170.0: 2002, and AS/NZS 1170.3: 2011. The design must incorporate all loads including dead loads, live loads, wind load (lateral, uplift, and downward pressure), and potential impact load, and
- d) If the awning(s) is to be built over an exit that would be utilised in an emergency it must be constructed of non-combustible material, and
- e) Lighting is required and must comply with AS/NZS 1158.3.1: 2005 and AS/NZS 1158.0: 2005. Lighting must be recessed into the awning and be integral to its structure with all wiring and conduits concealed, and

Subject to compliance with the requirements above, Bayside Council grants approval pursuant to Section 138 of the Roads Act 1993. Council's approval remains whilst the structure is in place and the structural stability of the awning is not compromised. Maintenance of the awning is the responsibility of the owner of the land.

36. To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant must:
- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services,
 - b) Negotiate with the utility authorities (eg AusGrid, Sydney Water, Telecommunications Carriers) and Council in connection with:
 - i) The additional load on the system, and

- ii) The relocation and/or adjustment of the services affected by the construction.
- c) The Ausgrid lighting poles will need to be decommissioned and new lighting poles must be constructed satisfying V2 lighting requirements any other requirements as specified by Council, RMS and any other service provider,
- d) All above ground utilities must be relocated underground in accordance with Ausgrid and any other affected and relevant service provider, and
- e) All underground and above ground infrastructure shall be constructed as specified by Ausgrid, RMS, Council and any other affected service provider. The location of the new electrical pillars, new lighting poles, any new pits and trenches for utilities shall be confirmed with Council prior to the issue of a Construction Certificate.

All low voltage street mains in the street/s adjacent to the development must be placed underground. This shall include any associated services and the installation of underground supplied street lighting columns where necessary. The applicant shall confer with Ausgrid to determine Ausgrid requirements. Written confirmation of Ausgrid's requirements shall be obtained prior to the issue of a Construction Certificate.

Any costs in the relocation, adjustment, and provision of land or support of services as requested by the Council and service authorities are to be the responsibility of the developer.

37. Prior to the issue of a Construction Certificate, the applicant shall submit a Frontage Works Application. Public domain landscape improvements plan shall be submitted for approval by Council. The Plan shall be undertaken by a suitably experienced Landscape Architect and shall include but not be limited to new street tree planting, footpath paving (segmental/other), street tree pit treatments and tree guards, street furniture, in ground landscaping, irrigation, lighting. The Plan shall be in accordance with Council's City Identity Program, Landscape DCP and any other Council specification or requirement. Civil drawings shall be included detailing levels and detailed footpath construction sections in accordance with Council's Engineering Services requirements. Contact Council's Landscape Architect for further details of specific requirements in preparation of the plan.

A Public Domain Frontage Design must be prepared by suitably qualified professionals for assessment and approval by Council's Public Domain Team for all frontage works that are required to be constructed within the public domain and which are subject to approval pursuant to Section 138 of the Roads Act 1993. All frontage works shall be in accordance with Council technical manuals, master plans, town centre plans, Australian standards and standard design drawings and specifications.

Public domain frontage works shall include, but not be limited to, civil, drainage, landscaping, undergrounding of services, lighting, traffic signage, line marking, parking and traffic devices.

A 'public domain frontage works application' must be submitted to Bayside Council's Customer Service Centre for assessment of all required works within the road reserve, upon payment of the relevant fee, prior to the issue of a Construction Certificate.

Note: Preliminary consultation with Council's public domain team is recommended.

38. Prior to the issue of a Construction Certificate, a Construction Management Program must be submitted to, assessed and approved by the Principal Accredited Certifier prior to the issue of any Construction Certificate. The program must detail:

- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or public reserves being allowed,
 - b) The proposed phases of construction works on the site and the expected duration of each construction phase,
 - c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken,
 - d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
 - e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site,
 - f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period,
 - g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site,
 - h) The proposed method of support to any excavation adjacent to adjoining properties and the road reserve. The proposed method of support is to be designed and certified by an Accredited Certifier (Structural Engineering), or equivalent,
 - i) Proposed protection for Council and adjoining properties, and
 - j) The location and operation of any on site crane. Please note that a crane may require prior approval from Sydney Airports Corporation.
 - k) The location of any Construction Work Zone (if required) approved by Council's Traffic Committee, including a copy of that approval.
 - l) Obtain Permits required under this consent.
39. Prior to the issue of a Construction Certificate, a detailed Traffic Management Plan for the pedestrian and traffic management of the site during construction must be prepared and submitted to the Principal Accredited Certifier for assessment and approval. The plan must:
- be prepared by a RMS accredited consultant,
 - address, but not be limited to, the following matters:
 - ingress and egress of vehicles to the site;
 - loading and unloading, including construction zones;
 - predicted traffic volumes, types and routes; and
 - pedestrian and traffic management methods.
 - nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and
 - if required, implement a public information campaign to inform any road changes well in advance of each change. The campaign may be required to be approved by the Traffic Committee.

Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include

times and dates of changes, measures, signage, road markings and any temporary traffic control measures.

40. Prior to the issue of a Construction Certificate, the following changes are required to be made and shown on the Construction Certificate plans:
 - a) Parking space number 1 is to be allocated as a visitor parking space and shall be designed as a car wash bay. A tap shall be provided along with a sign fixed to the wall saying 'Visitor Car Space and Car Wash Bay'. The car wash bay must be bundled in accordance with AS1940 – 1993 and AS/NZS 4452 – 1997 with direct connection to the sewer in accordance with a Sydney Water trade waste agreement.
 - b) Parking spaces numbered 2, 3 & 4 are to be redesigned as two accessible spaces, with spaces 2 and 4 being the accessible spaces and space 3 being the shared zone with a bollard as per AS2890.6.
 - c) Parking space number 2 is to be allocated as a visitor parking space.
 - d) Parking space number 3 is no longer to be allocated to any unit/commercial tenancy.
 - e) Parking space number 9 is no longer to be designated as a car wash bay.
 - f) Parking spaces numbered 14 & 15 are to be allocated to the residential component of the development for the residential units.
 - g) The retail loading bay is to be shared between the commercial and residential components of the development. This loading bay is to be designated as a van loading bay (B99 vehicle as stipulated in AS2890.1).
41. The subdivision plans listed in condition 1 shall be updated to reflect compliance with the car parking requirements in condition 40.
42. All vertical plumbing, other than roofwater heads and downpipes, shall be concealed within the brickwork of the building. Any electrical kiosks or fire booster valves shall be located in unobtrusive locations toward site boundaries and away from entrances into the building. Utilities shall be softened with landscaping so as not to detract from the overall appearance of the development and amenity of the streetscape. Details demonstrating compliance with this requirement shall be submitted to the Principal Certifying Authority (PCA) prior to the issue of a Construction Certificate.
43. Prior to the issue of a Construction Certificate for the development, an application for Property Address Allocation and associated fee are required to be submitted to Council. All new addresses will be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy.
44. To maximise security in and around the development the following shall be incorporated into the development. Details for the following are to be approved by the Principal Certifying Authority prior to the issue of a Construction Certificate, implemented prior to issue of the Occupation Certificate, and maintained for the lifetime of the development:
 - a) Monitored CCTV facilities shall be implemented throughout the development. Areas of focus include the basement car park (including entry and exits), main entry areas to the development and garbage/storage areas.
 - b) A lighting maintenance policy shall be established for the development. Lighting shall be designed to the Australian and New Zealand Lighting Standards. Australia and New Zealand Lighting Standard 1158.1 - Pedestrian, requires lighting engineers and designers to consider crime risk and fear when selecting lamps and lighting levels.
 - c) Security mirrors shall be installed within corridors and on blind corners to enable users to see around blind corners.
 - d) Graffiti resistant materials shall be used to ground level external surfaces.

- e) Intercom facilities shall be installed at all vehicular and pedestrian entry/exit points to enable residents to communicate and identify with people prior to admitting them to the development.
 - f) The front window of the ground floor tenancy must be kept free of shelves, and a maximum of 15% of the window display area may be covered with promotional materials to ensure passive surveillance is maintained to and from the tenancy.
45. Prior to the issue of a Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- a) The single lane entry ramp to the basement from the ground floor requires traffic management to manage two-way movement. To this effect a traffic signal management system (including traffic lights and vehicular sensors) to manage conflicting two way movements shall be designed and certified by a suitably qualified traffic engineer for implementation within the parking facility.
 - b) A queueing assessment and probability of conflict analysis must be submitted detailing the 95th Percentile queue length expected at the top of the proposed single lane ramp and the probability of a conflict in any given AM or PM peak hour.
 - c) Line marking and signage must be provided at both the entry to the one way ramp on the ground floor and at the base of the one way ramp in the basement of the development to clearly delineate waiting bay areas that provide for passing of vehicles entering/exiting the basement car park via the ramp. The function of these waiting areas must be demonstrated using swept paths for a B85 passing a B99 vehicle with appropriate clearances as per AS/NZS 2890.1:2004.
 - d) The above requirements are to be designed and certified by a suitably qualified engineer experienced in traffic management, parking design and traffic signalling systems.
46. Prior to the issue of a Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- All driveways/access ramps/vehicular crossings shall conform with Australian Standards AS 2890.1 and Council requirements,
 - The applicant shall provide longitudinal sections along the extremities and the centre line of each internal driveway/access ramp at a scale of 1:25. These long sections shall extend from the horizontal parking area within the property to the centre line of the roadway. The sections shall also show the clear height from the ramp to any overhead structure.
 - Swept path analysis (utilising a recognised computer software) shall be provided for vehicular circulation areas, ramps, residential parking spaces, commercial parking spaces, indicating they can enter and exit the property in a forward direction
 - Internal height clearance shall be designed throughout the car park at minimum in accordance with AS/NZS 2890.1:2004.
 - A minimum of five (5) bicycle parking spaces are to be provided for the development on the ground floor and designed in accordance with AS 2890.3:2015.
 - The design of the car parking facility is to be certified by a suitably qualified traffic engineer as being in accordance with Australian Standard 2890 parking series.

47. Prior to the issue of a Construction Certificate, the following required section(s) are to be submitted to and approved by the Principal Certifying Authority:
- At least four (4) accessible car parking spaces shall be provided and designed as specified in Australian Standard 2890.6, SEPP 65 Design Code and Council requirements, and
 - All off street accessible parking shall have access to the adjacent road(s) and to the communal open space as per Australian Standards 2890.6 and Council requirements, and
 - All Accessible parking spaces shall be located within close proximity and easy access to the lift systems proposed for the building as per AS2890.6 and AS4299.
48. The subsurface structure must be designed with a waterproof retention system (ie tanking and waterproofing) with adequate provision for future fluctuation of the water table. The subsurface structure is required to be designed with consideration of uplift due to water pressure and "flotation" (buoyancy) effects. Subsoil drainage around the subsurface structure must allow free movement of groundwater around the structure, but must not be connected to the internal drainage system. The design of subsurface structure, tanking and waterproofing, and subsoil drainage must be undertaken by a suitably experienced Chartered Professional Engineer(s). Design details and construction specifications must be included in the documentation accompanying the Construction Certificate.
49. Prior to the issue of a Construction Certificate, as the basement floor are being proposed closer to existing built structures on neighbouring properties, which may be in the zone of influence of the proposed works and excavations on this site, a qualified practicing chartered professional geotechnical engineer must:
- a) That the construction methodology, parameters and all recommendations contained in the Geotechnical and Acid Sulfate Soil Investigation Report prepared by STS GeoEnvironmental Pty Ltd, Report No: 19/1260, project No:22264/1916D-G, dated June 2019, (including any further geotechnical testing required as deemed necessary by the geotechnical engineer) shall be implemented and relied upon during the preparation of the construction certificate documentation and the construction of the development,
 - b) Provide a certificate that the construction certificate plans are satisfactory from a geotechnical perspective, and
 - c) Prepare a Construction Methodology report demonstrating that the proposed construction methods (including any excavation, and the configuration of the built structures) will have no adverse impact on any surrounding property and infrastructure. The report must be submitted with the application for a Construction Certificate for the relevant stage of works.
 - d) Inspect the works as they progress. The Inspections are to occur at frequencies determined by the geotechnical engineer.
 - e) Where a Private Certifier issues the Construction Certificate a copy of the above documentation must be provided to Council, once the Construction Certificate is issued for the relevant stage of works.

Note: A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising

from the removal of any support to supported land as defined by section 177 of the Conveyancing Act 1919.

50. Prior to the issue of a Construction Certificate, a certificate from a practicing Structural Engineer, registered with NER, must be submitted to the Principal Accredited Certifier stating that the subsurface structural components located on the boundary of the public road and neighbouring properties, including but not limited to the slabs, walls and columns, have been designed in accordance with all SAA Codes for the design loading from truck and vehicle loads. An engineering design certificate is required to be submitted for the design of the Basement system including shoring wall. The certificate shall be issued by a Chartered Professional Engineer competent in Structural engineering.

If it is necessary to excavate below the level of the base of the footings of the adjoining buildings/roadways, the person acting on the consent shall ensure that the owner/s of the building/roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

51. A suitably qualified engineer is to certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy in a 1% AEP flood event. All building materials shall be flood resistant, or flood compatible to a height of 500mm above the 1% AEP flood, or flow level. All internal electrical switches, power points or similar utilities liable to flood damage shall be set at a minimum of 500mm above the 1% AEP flood, or flow level. Details shall be provided and approved prior to the issue of a Construction Certificate.
52. Flow through open form fencing (louvres or pool fencing) is required for all new front fencing to albert street and all internal fences and gates up to the 1% AEP flood level. Any new boundary fences adjoining private property shall have an 80mm gap at the bottom to allow flows through. Documentation shall be provided to the Certifying Authority prior to the issue of a Construction Certificate.
53. Prior to the issue of a Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
54. Prior to the issue of a Construction Certificate, the approved plans must be submitted to Sydney Water Tap inTM online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. Sydney Water's Tap inTM online service is available at: <https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>
55. If neighbouring properties or roadway are to be utilised for excavation support, the legal rights of any adjoining properties must be respected including for permanent and temporary excavation supports. In this regard, the written permission of the affected property owners must be obtained and a copy of the owner's consent for excavation support or other material in adjacent lands must be lodged to the principal certifier.

56. Where excavation support materials are proposed to be used in public land, an application must be made to Council for approval under Section 138 of the Roads Act 1993, via a permit application. The submission would need to be supported by an engineering report prepared by a suitably qualified engineer, with supporting details addressing the following issues:

Demonstrate that any structures will not adversely affect public infrastructure, and the proposed supports within the road reserve are of an adequate depth to ensure no adverse impact on existing or potential future service utilities in the road reserve. All existing services must be shown on a plan and included on cross-sectional details where appropriate.

The report must be supported by suitable geotechnical investigations to demonstrate the efficacy of all design assumptions.

57. Prior to the issue of a Construction Certificate, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves or improves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.
58. Prior to the issue of a Construction Certificate the required Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 has to be paid. The Long Service Levy is payable at 0.35% of the total cost of the development, however this is a State Government Fee and can change without notice.
59. The applicant must prior to the obtainment of the approved plans and specifications pay the following fees:-
- | | | |
|----|----------------------------|--------------|
| a) | Footpath Crossing Deposit | \$213,000.00 |
| b) | Development Control | \$3,081.00 |
| c) | Section 7.11 Contributions | \$320,000.00 |
60. A Section 7.11 contribution of \$320,000.00 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012. The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained in the Contributions Plan. The contribution is to be paid prior to the issue of a Construction Certificate. The contributions are only used towards the provision or improvement of the amenities and services identified below:
- | | | |
|-----------------|----------------------------|--------------|
| a) | Community Facilities: | \$26,194.57 |
| b) | Recreation and Open Space: | \$270,253.34 |
| c) | Transport Facilities: | \$21,222.11 |
| d) | Administration: | \$2,329.98 |
| Total in 2018/9 | | \$320,000.00 |
61. Prior to the issue of a Construction Certificate, the applicant lodge a Builder's Damage Deposit and Performance Bond of **\$213,000.00** (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refunded subject to

inspection by Council 12 months after the completion of all works relating to the proposed development and Final Occupational Certificate has been issued.

62. An easement shall be created over the car parking area (eastern side of basement level and ground level) to facilitate future vehicular access to the adjoining site at No.19 Swinbourne Street. Prior to the issue of a Construction Certificate for the basement level, construction details shall be provided to the Certifying Authority demonstrating that the proposed structure is able to achieve the required link without affecting the structural stability of the building. The easement is to be registered prior to issue of the subdivision certificate.
63. Prior to the issue of a Construction Certificate, a plan (written and/or diagrammatic) shall be submitted and approved by the Principal Certifying Authority, showing the storage location of construction building materials and plants and the method of access to the property. No storage of construction materials and plants to be allowed in road reserve area.

CONDITIONS WHICH MUST BE SATISFIED DURING WORKS

64.
 - a) The applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
 - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
 - c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
 - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
65. Trees 1,2,3,4 and 7 must be retained and protected in accordance with Arboricultural Impact Assessment Report prepared by Bryce Claassens, dated 26 July 2019. The tree protection requirements detailed within Part 11 of this report must be complied with at all times.
66. During demolition, excavation and construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of demolition, excavation and construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
67. During demolition, excavation, construction and deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion to prevent any vehicles (including deliveries) tracking soil materials onto street drainage system/watercourse, Council's lands, public roads and road-related areas.

Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or Council's land.

68. During construction, the applicant shall ensure that all works and measures have been implemented in accordance with approved Traffic Management Plan and Construction Management Plan at all times.
69. Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the principal contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.

Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the principal contractor and any sub-contractor clearly setting out required work practice. A copy of any written direction required by this condition must be provided to the Principal Certifier within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, principal contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.

Note: Professional engineer has the same meaning as in Clause A1.1 of the BCA.

Note: Building has the same meaning as in section 4 of the Act i.e. "building includes part of a building and any structure or part of a structure".

Note: Supported land has the same meaning as in section 88K of the Conveyancing Act 1919.

70. Inspections must be conducted by Council's Engineer at the following occasions:
 - a) Formwork inspection of driveway layback and adjacent kerb and gutter prior to laying of concrete,
 - b) Formwork inspection of Council's kerb and gutter prior to laying of concrete,
 - c) Formwork inspection of Council's footpath prior to laying of concrete,
 - d) Final inspection of driveway layback and adjacent kerb and gutter,
 - e) Final inspection of Council's kerb and gutter,

- f) Final inspection of Council's footpath.
71. For any water from site dewatering to be permitted to go to the stormwater system, the water must meet the relevant default guideline values (DGVs) under the Australian & New Zealand Guidelines for Fresh & Marine Water Quality. All testing must be completed by a NATA accredited laboratory. All laboratory results must be accompanied by a report prepared by a suitably qualified and experienced person indicating the water is acceptable to be released into Council's stormwater system. If it is not acceptable, details of treatment measures to ensure that the water is suitable for discharge to council's stormwater must be provided in this report. Reports must be provided to council prior to discharge of any groundwater to the stormwater system.
72. If an excavation associated with the proposal extends below the level of the base of the footings of a building and/or structure and/or road on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
- a) Must preserve and protect the building/ fence from damage; and,
 - b) If necessary, underpin and support such building in an approved manner;
 - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
 - d) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - e) If the soil conditions required it:
 - i. Retaining walls associated with the erection of a building or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and:-
 - ii. Adequate provision must be made for drainage.
73. Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.
74. To prevent contaminated soil being used onsite and to ensure that it is suitable for the proposed land use, all imported fill shall be appropriately certified material and shall be validated in accordance with the:
- a) Office of Environment and Heritage (OEH) approved guidelines;
 - b) Protection of the Environment Operations Act 1997; and
 - c) Protection of the Environment Operations (Waste) Regulation 2014.
- All imported fill shall be accompanied by documentation from the supplier which certifies that the material has been analysed and is suitable for the proposed land use.
75. All contractors shall comply with the following during all stages of demolition and construction:
- A Waste Container on Public Road Reserve Permit must be obtained prior to the placement of any waste container or skip bin in the road reserve (i.e. road or footpath or nature strip). Where a waste container or skip bin is placed in the

- road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
- A Road Opening Permit must be obtained prior to any excavation in the road reserve (i.e. road or footpath or nature strip). Where excavation is carried out on the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Hoarding Permit must be obtained prior to the erection of any hoarding (Class A or Class B) in the road reserve (i.e. road or footpath or nature strip). Where a hoarding is erected in the road reserve without first obtaining a permit, the Council's fees and penalties will be deducted from the Footpath Reserve Restoration Deposit. Permits can be obtained from Council's Customer Service Centre.
 - A Crane Permit must be obtained from Council prior to the operation of any activity involving the swinging or hoisting of goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway. Permits can be obtained from Council's Customer Service Centre.
 - A Permit to Dewater or Pump Out a site must be obtained prior to the discharge of pumped water into the road reserve, which includes Council stormwater pits and the kerb and gutter. Permits can be obtained from Council's Customer Service Centre.
76. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
77. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
78. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
79. To ensure that relevant engineering and water quality provisions are met during the period of dewatering for construction, prior to any water from site dewatering to be permitted to go to councils stormwater system a permit to discharge to the stormwater must be obtained from Council. Dewatering must not commence until this is issued by Council.
80. All materials excavated from the site (fill or natural) must be classified in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines (2014) prior to being disposed of to a NSW approved landfill or to a recipient site. Appropriate records must be retained to support this.
81. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:
- a) The Erosion and Sediment Control Plan;
 - b) "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
 - c) Protection of the Environment Operations Act 1997.

82. The proposed development shall comply with the following:
- a) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - i) Stating that unauthorised entry to the work site is prohibited;
 - ii) Showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours;
 - iii) The Development Approval number; and
 - iv) The name of the Principal Certifying Authority including an afterhour's contact telephone number.
 - b) Any such sign is to be removed when the work has been completed.
83. The demolisher shall comply with Australian Standard 2601 - 2001 "Demolition of Structures".
84. Precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:
- a) Protection of site workers and the general public.
 - b) Erection of hoardings where appropriate.
 - c) Asbestos handling and disposal where applicable.
 - d) Any disused service connections shall be capped off.
 - e) The disposal of refuse is to be to an approved waste disposal depot.
85. Hazardous or Special Wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Department of Environment, Climate Change and Water and with the provisions of the:
- a) Occupational Health and Safety Act, 2000;
 - b) Occupational Health and Safety Regulation 2001;
 - c) Protection Of the Environment Operations Act 1997 (NSW); and
 - d) NSW Department of Environment and Climate Change Waste Classification Guidelines (2008).
86. Any material containing asbestos found on site during the demolition process the shall be removed and disposed of in accordance with:
- a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m2 of bonded asbestos and/or any friable asbestos;
 - b) Protection of the Environment Operations Act 1997;
 - c) Protection of the Environment Operation (Waste) Regulation;
 - d) DECC Waste Classification Guidelines 2008.
 - e) No demolition materials shall be burnt or buried on the site.
87. The demolition and disposal of materials incorporating lead such as lead paint and dust shall be conducted in accordance with:
- a) AS2601-2001 - Demolition of structure.
 - b) AS4361.2-1998 – Guide to Lead Paint Management-Residential and Commercial Buildings
88. In order to ensure safe handling of asbestos materials, the re-use or sale of asbestos building materials is strictly prohibited.

89. Results of the monitoring of any field parameters such as soil, groundwater, surface water, dust or noise measurements shall be made available to Council Officers on request throughout the remediation and construction works.
90. No demolition materials shall be burnt or buried on the site.
- 91.
- a) To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -
 - i) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
 - ii) Negotiate with the utility authorities (eg Ausgrid, Sydney Water and Telecommunications Carriers) and Council in connection with: -
 - 1 1 The additional load on the system; and
 - 2 2 The relocation and/or adjustment of the services affected by the construction.
 - b) Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.
92. Should the demolition process require a building waste container(s) (builders' skip), then such container must not be placed or left upon the public road, footpath, reserve or the like without the prior approval of the Council. The use of any part of Council's road reserve must also have prior approval of Council.
93. Throughout the construction period, Council's warning sign for soil and water management shall be displayed on the most prominent point of the building site, visible to both the street and site workers. A copy of the sign is available from Council's Customer Service Counter.
94. All possible and practicable steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from wind-blown dust, debris, noise and the like.
- 95.
- a) All excavations and backfilling shall be executed safely and in accordance with appropriate professional standards; and all excavations shall be properly guarded and protected to prevent them from being dangerous to life or property;
 - b) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - c) As the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - i) Protect and support the adjoining premises from possible damage from the excavation, and
 - ii) Where necessary, underpin the adjoining premises to prevent any such damage.

96. The following shall be complied with during construction and demolition:
- a) Construction Noise
Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.
 - b) Level Restrictions
 - i) Construction period of 4 weeks and under:
The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).
 - ii) Construction period greater than 4 weeks and not exceeding 26 weeks:
The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).
 - c) Time Restrictions
 - i) Monday to Friday 07:00am to 05:00pm
 - ii) Saturday 08:00am to 01:00pm
 - iii) No Construction to take place on Sundays or Public Holidays.
 - d) Silencing
All possible steps should be taken to silence construction site equipment.
97. The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Department.
- 98.
- a) In order to prevent vehicles tracking soil or other materials onto public roads and washing of materials into the street drainage system or watercourse, during Excavation, Construction and Deliveries, access to the site shall be available in all weather conditions. The area shall be stabilised and protected from erosion; and,
 - b) In addition, concrete trucks and any other trucks that used for the transportation of building materials or similar, shall not traffic soil cement or other materials onto the road reserve. Hosing down of vehicle tyres shall only be conducted in a suitable off-street area where wash waters do not enter the stormwater system or enter Council's land.
 - c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
 - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
 - e) Building operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on public roadways or footways or in any other locations which could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
99. Construction Operations:
- a) the applicant shall conduct all construction works and any related deliveries/activities wholly within the site. If any use of Council's road reserve is required, approval and permits shall be obtained from Council.
 - b) Construction operations such as brick cutting, washing tools or brushes and mixing mortar shall not be carried out on park/road reserve or in any other locations which

- could lead to the discharge of materials into the stormwater drainage system or onto Council's lands.
- c) Hosing down or hosing/washing out of any truck (concrete truck), plant (eg concrete pumps) or equipment (eg wheelbarrows) on Council's road reserve or other property is strictly prohibited. Fines and cleaning costs will apply to any breach of this condition.
 - d) Pavement surfaces adjacent to the ingress and egress points are to be swept and kept clear of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.

100. During construction work the Council nature strip shall be maintained in a clean and tidy state at all times. The nature strip shall be suitably replaced where damaged due to construction work in accordance with Council Specification at the completion of construction, and at the Applicant's expense.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF ANY OCCUPATION CERTIFICATE

101. The lots shall be consolidated into one allotment. Council requires proof of lodgement of the plan of consolidation with the Land and Property Information Office prior to the issue of any Occupation Certificate.
102. To ensure satisfactory growth and maintenance of the landscaping, a fully automatic drip irrigation system is required in all landscaped areas. The system shall be installed by a qualified landscape contractor and provide full coverage of planted areas with no more than 300mm between drippers, automatic controllers and backflow prevention devices, and should be connected to a recycled water source. Irrigation shall comply with both Sydney Water and Council requirements as well as Australian Standards, and be maintained in effective working order at all times. Irrigation system shall be connected to rainwater tank as a WSUD principle.
103. The Applicant is required to obtain a Council inspection of new trees prior to the planting to ensure plant stock is suitable and post planting prior to the maintenance period commencing.
104. The following conditions must be complied with prior to the issue of any Occupation Certificate:
- i) All landscape works are to be carried out in accordance with the approved landscape plans (refer to Condition 1) for the approved development. The landscaping is to be maintained to the approved standard at all times.
 - ii) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.
105. Prior to the issue of any Occupation Certificate, the undergrounding of all electricity cables in that section of the street/s adjacent to the development, including all associated services and the installation of underground supplied street lighting columns, shall be carried out at the applicant's expense. The works shall be completed in accordance with Ausgrid's requirements and approved electrical design.
106. Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified

at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.

107. Prior to the issue of any Occupation Certificate, the applicant must carry out the following works, at no cost or expense to Council:

- On Swinbourne Street and Albert Street, adjacent to development, remove redundant driveway crossovers and replace with required tree planting and public domain improvements as specified by Council in accordance with any public domain masterplans and Council's Infrastructure Specifications, and
- On Swinbourne Street and Albert Street, adjacent to development, demolish existing footpath and construct new footpath as per Council's Infrastructure and Landscape Architect specifications, and
- On Swinbourne Street and Albert Street, adjacent to development, reconstruct existing kerb and gutter for the full length of the property in accordance with Council Infrastructure Specifications.

All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be constructed to the satisfaction of Bayside Council.

108. The public footpaths shall be constructed in accordance with the approved Public Domain Plan and Council specifications. The footpath dimensions, location, paver type and construction methods shall be in accordance with these specifications. Hold points and Council inspections are required after formwork setback and to prior pouring the concrete blinding slab, at the commencement of paving works and at final completion as a minimum. Pavers shall be ordered allowing for adequate lead time for manufacture (10-12 weeks).
109. A full width vehicular entry is to be constructed to service the property. All obsolete vehicular entries are to be removed and reconstructed with kerb and gutter.
110. Prior to the issue of any Occupation Certificate, inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.
111. Prior to the issue of any Occupation Certificate, documentation from suitably qualified engineer must be submitted to the Principal Accredited Certifier certifying that the vehicle access and off street parking facilities have been constructed in accordance with the approved construction plans, AS/NZS 2890.1:2004, AS2890.2:2018 and AS/NZS 2890.6, line marked, all signage relating to car parking erected and that the car parking area is clearly and appropriately marked/signposted indicating all the vehicular movements on the site. The internal road network, pedestrian facilities and parking facilities (including visitor parking and parking for persons with disabilities) shall be clearly designated, sign posted and line marked prior to the issuing of an Occupation Certificate. Signage and line marking shall comply with Australian Standards, AS1742, Manual of Uniform Traffic Control Devices and NSW Road Transport (Safety and Traffic Management) Regulations 1999. Concrete wheel stops shall be installed in all car spaces adjoining high obstructions in accordance with AS/NZS 2890.1:2004. The traffic light/sensor system shall be installed and the waiting bays shall be line marked to the satisfaction of a suitably qualified traffic engineer.

112. All vehicles shall enter and exit the site in a forward direction at all times. A plaque with minimum dimensions 300mm x 200mm shall be permanently fixed to a prominent place near the primary vehicular entrance to the site, approved by the principal certifier, stating the following: "All vehicles shall enter and exit the site in a forward direction at all times".
113. Prior to the issue of any Occupation Certificate, a Chartered Professional Engineer must certify that the stormwater system has been constructed in accordance with the approved plans and as required by Botany Bay DCP Part 10 Stormwater Management Technical Guidelines. The certificate shall include an evaluation of the completed drainage works. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
114. Prior to the issue of any Occupation Certificate, a registered plumber's certification that the Rainwater Tank Re-use system(s) has been fitted with a first flush device and connected for non-potable uses including all toilet flushing, laundry and landscape irrigations must be provided. All works completed shall comply with the current plumbing requirements of Sydney Water and Committee on Uniformity of Plumbing and Drainage Regulations of NSW.
115. Prior to the issue of any Occupation Certificate, a chartered professional engineer shall certify that the tanking and waterproofing has been constructed in accordance with the approved design and specification. A copy shall be provided to Council if council is not the Principal Certifying Authority.
116. Prior to the issue of any Occupation Certificate, a Chartered Professional Engineer competent in geotechnics shall certify that the construction works have been constructed in accordance with the approved geotechnical report/recommendations and include an evaluation of the completed works. A copy of the certificate shall be supplied to the Principal Certifying Authority.
117. A certificate from a Registered Surveyor shall be provided to the Principal Certifying Authority (PCA) certifying that the floor levels of the development are constructed at or above the floor levels from the approved flood study recommendations (section 8 – page 18 of the flood study). A copy of the certificate shall be provided to Council where Council is not the Principal Certifying Authority.
118. Prior to the issue of any Occupation Certificate, the approved flood management plan shall be laminated and permanently attached to a prominent location on the ground floor residential lobby, the commercial/retail tenancies and the ground floor parking area to the satisfaction of the Principal Certifier.
119. Prior to the issue of any Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) must be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
 - A positive covenant pursuant to the Conveyancing Act 1919 shall be created on the title of the lots that contain the traffic signal facility to provide for the maintenance of the facility.
 - Positive Covenant and Restriction on Use of Land for On-Site Retention System. Refer to Appendix B of the SMTG for suggested wording.

- Positive Covenant and Restriction on Use of Land for Pump-Out System. Refer to Appendix C of the SMTG for suggested wording.

The terms of the 88 E instruments are to be submitted to Council for review and approval and Proof of registration at the Lands and Property Information Office shall be submitted to the Principal Certifying Authority and Council prior to occupation.

120. Prior to the issue of any Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifier prior to release of the Subdivision/Strata Certificate.

121. Prior to the issue of any Occupation Certificate for occupation or use of residential flat development, a design verification statement shall be submitted to the PCA from a qualified designer certifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

122. Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to the issue of any Occupation Certificate of the development and release of damage deposit.

123. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed and accepted by council.

124. Construction related activities must not take place on the roadway without Council approval. Short-term activities (including operating plant, materials delivery) that reduce parking spaces, affect access to a particular route or prevent or restrict the passage of vehicles along the road must not occur without a valid Temporary Roadside Closure Permit. Activities involving occupation of the parking lane for durations longer than allowed under a Temporary Roadside Closure Permit require a Construction Zone Permit and must not occur prior to the erection of Construction Zone signs by the RTA.

Permit application forms should be lodged at Council's Customer Service Centre allowing sufficient time for evaluation. An information package is available on request.

125. The street address and dwellings numbers shall be approved by Council prior to the issue of any Occupation Certificate.

126. A by-law shall be registered and maintained for the life of the development, which requires that :

(a) balconies are not to be used as clothes drying areas, storage of household goods and air-conditioning units that would be visible from the public domain.

Proof of registration of the By Law shall be submitted to Council prior to the issue of any Occupation Certificate.

CONDITIONS WHICH MUST BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

127. Separate applications must be made for Subdivision Certificate. Submission of a subdivision certificate application is to be accompanied by a linen plan with three (3) copies and appropriate fees.
128. An easement shall be created over the car parking area (eastern side of basement level and ground level) to facilitate future vehicular access to the adjoining site at No.19 Swinbourne Street. Prior to the issue of a Construction Certificate for the basement level, construction details shall be provided to the Certifying Authority demonstrating that the proposed structure is able to achieve the required link without affecting the structural stability of the building. The easement is to be registered prior to issue of the Subdivision Certificate.
129. Prior to the issue of the Subdivision Certificate, documentary evidence demonstrating compliance with all conditions of Development Consent No.2018/378 as well as any other relevant approval.
130. Prior to the issue of a Subdivision Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifier prior to release of the Subdivision/Strata Certificate.

131. Prior to the issue of a Subdivision Certificate, the linen plans must include details of any easements, encroachments, rights of way, restriction as to user or positive covenants and include a Section 88B Instrument under the Conveyancing Act, 1919. Council is to be nominated as the only authority permitted to release, vary or modify any easements, encroachments, rights of way, restriction as to user or positive covenants.

CONDITIONS WHICH MUST BE SATISFIED FOR THE ONGOING USE

132. New street trees shall be maintained by the Applicant/Owner/Strata Corporation for a period of 24 months after final inspection by Council. Maintenance includes twice weekly watering within the first 6 months then weekly thereafter to sustain adequate growth and

health, biannual feeding, weed removal round the base, mulch replenishment at 3 monthly intervals (to 75mm depth) and adjusting of stakes and ties.

133. Car parking shall be allocated in accordance with condition 40 and as follows:

- 28 car parking spaces for residential apartments (1 space per 1 bedroom dwelling and 2 spaces per 2 bedroom dwelling);
- 4 spaces for residential visitors; and
- 8 spaces for the ground floor commercial/retail tenancy.

134. The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines. The water from the rainwater tank should not be used for drinking, the rainwater tank shall be routinely de-sludged and all contents from the de-sludging process disposed: Solids shall be disposed to the waste disposal and de-sludged liquid shall be disposed to the sewer.

135. The operation of the development and movements of vehicles must comply with the following requirements:

- a) All vehicles shall enter and exit the site in a forward direction;
- b) Loading and unloading activities associated with the delivery shall take place wholly within the dedicated loading areas;
- c) All manoeuvring movements of vehicles shall be carried out wholly within the site and vehicle manoeuvring area shall be kept clear at all times;
- d) The maximum size of vehicle accessing the site shall be limited to a Van (B99 vehicle as denoted in AS2890.1).

136. All wastewater and stormwater treatment devices (including drainage systems, sumps and traps) shall be regularly maintained in order to remain effective. All solid and liquid wastes collected from the device shall be disposed of in accordance with the Protection of the Environment Operations Act, 1997.

137.

- a) Each residential dwelling (apartment) is approved as a single dwelling. They shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this Consent without the prior Consent of the Council;
- b) The adaptable apartments approved under this development consent is to remain unaltered at all times; and
- c) The storage areas located within the basement shall be allocated to the relevant residential dwelling in any future subdivision of the site. In addition, any isolated storage areas and other spaces shall be monitored by CCTV cameras at all times.

138. The communal outdoor roof terrace area shall not be used between the hours of 10:00pm – 7:00am each day.

139. A person must not cause or permit an air conditioner to be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any

other residential premises (regardless of whether any door or window to that room is open):

- a) Before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
- b) Before 7 am or after 10 pm on any other day.

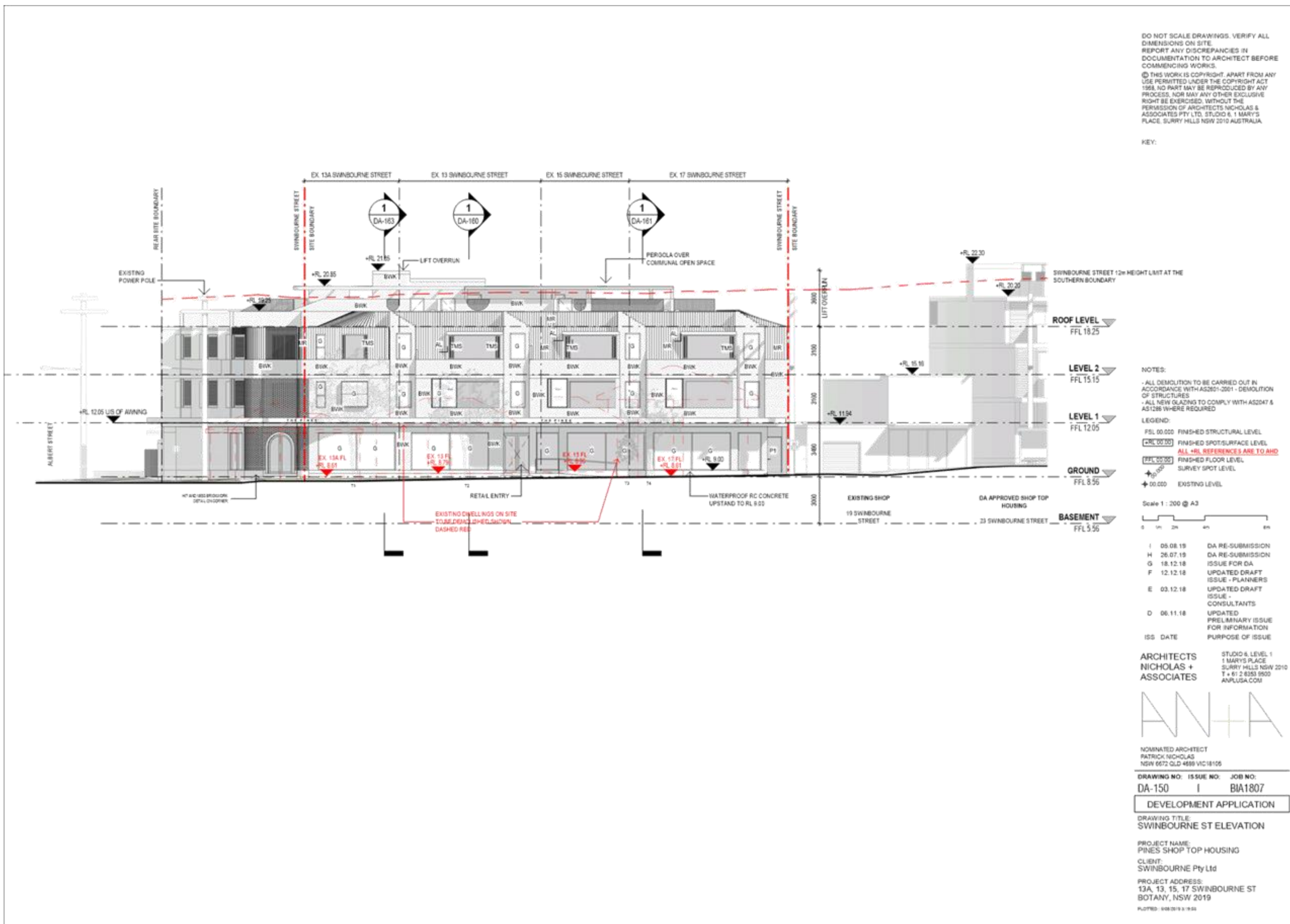
140. The operation of all plant and equipment shall not give rise to an equivalent continuous (LAeq) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background LA90 level (in the absence of the noise under consideration).

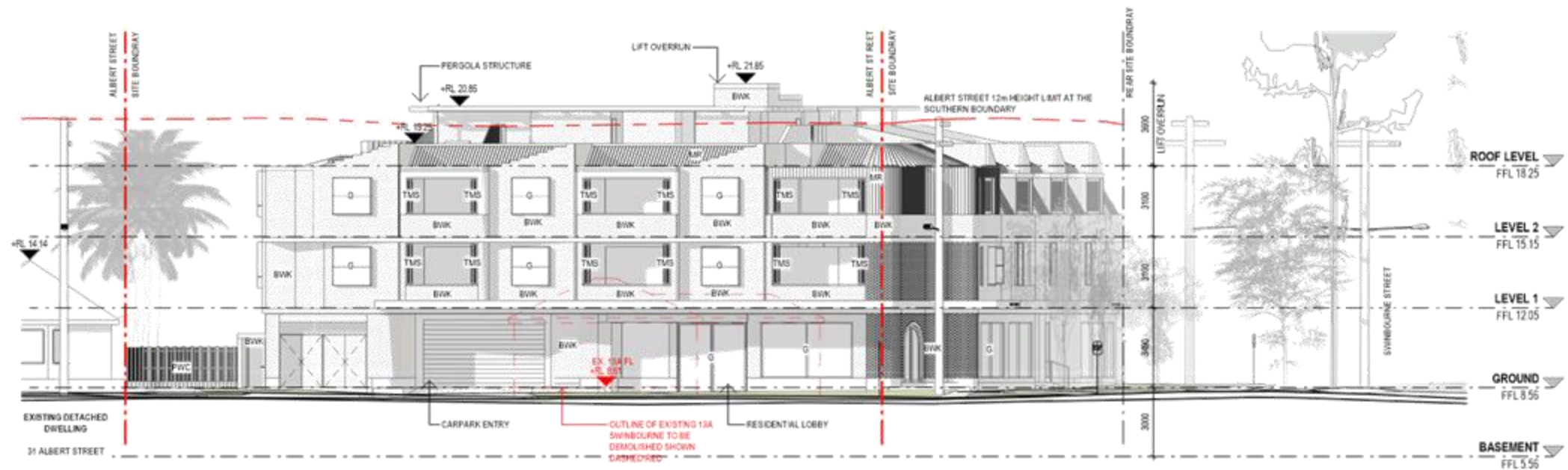
The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds LAeq 50dB(A) day time and LAeq 40 dB(A) night time.

The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds LAeq 65dB(A) day time/night time.

For assessment purposes, the above LAeq sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.







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+RL 00.000 FINISHED SPOT/SURFACE LEVEL
FPL 00.000 FINISHED FLOOR LEVEL
+S 00.000 SURVEY SPOT LEVEL
+ 00.000 EXISTING LEVEL

Scale 1 : 200 @ A3
0 1m 2m 4m 8m

H	05.08.19	DA RE-SUBMISSION
G	26.07.19	DA RE-SUBMISSION
F	18.12.18	ISSUE FOR DA
E	12.12.18	UPDATED DRAFT ISSUE - PLANNERS
D	03.12.18	UPDATED DRAFT ISSUE - CONSULTANTS
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NSW 6672 QLD 4889 VIC 18106

DRAWING NO: DA-151
ISSUE NO: H
JOB NO: BIA1807

DEVELOPMENT APPLICATION

DRAWING TITLE:
ALBERT ST ELEVATION

PROJECT NAME:
PINES SHOP TOP HOUSING

CLIENT:
SWINBOURNE Pty Ltd

PROJECT ADDRESS:
13A, 13, 15, 17 SWINBOURNE ST
BOTANY, NSW 2019

PLOTTED: 9/08/2019 3:14:19







PERSPECTIVE - CORNER SWINBOURNE & ALBERT ST

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+SD SURVEY SPOT LEVEL
+00.000 EXISTING LEVEL

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DRAWING NO: DA-001 ISSUE NO: F JOB NO: BIA1807

DEVELOPMENT APPLICATION

DRAWING TITLE:
3D PERSPECTIVES

PROJECT NAME:
PINES SHOP TOP HOUSING
CLIENT:
SWINBOURNE Pty Ltd

PROJECT ADDRESS:
13A, 13, 15, 17 SWINBOURNE ST
BOTANY, NSW 2019

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PERSPECTIVE - SWINBOURNE ST

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DRAWING NO: DA-002 ISSUE NO: F JOB NO: BIA1807

DEVELOPMENT APPLICATION

DRAWING TITLE:
3D PERSPECTIVES

PROJECT NAME:
PINES SHOP TOP HOUSING
CLIENT:
SWINBOURNE Pty Ltd

PROJECT ADDRESS:
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BOTANY, NSW 2019

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PERSPECTIVE - NORTH FACADE

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+SD SURVEY SPOT LEVEL
+00.000 EXISTING LEVEL

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DRAWING NO: DA-003 ISSUE NO: F JOB NO: BIA1807

DEVELOPMENT APPLICATION

DRAWING TITLE:
3D PERSPECTIVES

PROJECT NAME:
PINES SHOP TOP HOUSING
CLIENT:
SWINBOURNE Pty Ltd

PROJECT ADDRESS:
13A, 13, 15, 17 SWINBOURNE ST
BOTANY, NSW 2019

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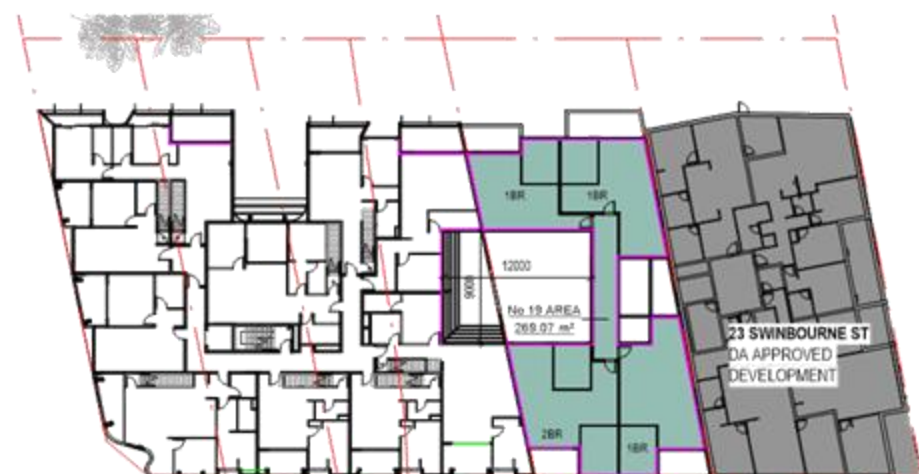
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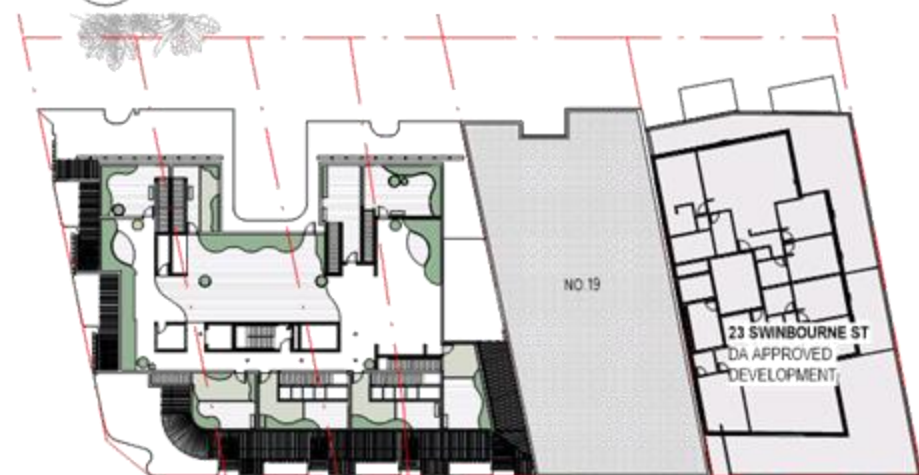
2 GROUND LEVEL (ISOLATED SITE NO.19)
scale - 1 : 500@ A3



3 LEVEL 1 (ISOLATED SITE NO.19)
scale - 1 : 500@ A3



4 LEVEL 2 (ISOLATED SITE NO.19)
scale - 1 : 500@ A3



5 ROOF LEVEL (ISOLATED SITE NO.19)
scale - 1 : 500@ A3

NO.19 GFA

TYPE	LEVEL	AREA
19 GFA	GROUND	199.38 m ²
19 GFA	LEVEL 1	269.07 m ²
19 GFA	LEVEL 2	269.07 m ²
TOTAL GFA		737.51 m ²

ISOLATED SITE NO.19
SITE AREA 527m²
FSR 1.5 : 1
PERMISSIBLE GFA 790.5m²
COMMUNAL OPEN SPACE 131.975m²
ISOLATED SITE GFA 790.0m²

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- SPOT SURVEY SPOT LEVEL
- +00.000 EXISTING LEVEL

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DRAWING NO: DA-303
ISSUE NO: D
JOB NO: BIA1807

DEVELOPMENT APPLICATION

DRAWING TITLE:
19 SWINBOURNE ST SITE
ISOLATION
PROJECT NAME:
PINES SHOP TOP HOUSING
CLIENT:
SWINBOURNE Pty Ltd

PROJECT ADDRESS:
13A, 13, 15, 17 SWINBOURNE ST
BOTANY, NSW 2019

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ANNEXURE C

Clause 4.6 Variation – Building Height





Clause 4.6 variation statement – maximum height (Clause 4.3)

Development Standard – Height of Buildings

Clause 4.3(2) of Botany Bay LEP 2013 relates to the maximum height requirements and refers to the *Height of Buildings Map*. The relevant map identifies the subject site as having a maximum height of 12m. Building height is defined as:

- " *building height (or height of building) means:*
- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
 - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*
- including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

Proposed Variation to Development Standard

Figures 18, 19 and 20 below demonstrate the proposed height variation via a height blanket diagram and the section plans indicating that the building has been designed to comply with the maximum permitted height, however, results in non-compliances that predominantly relate to the lift overrun and pergola that extend to a maximum height of 13.8m (equivalent to a 15% variation).



Figure 18: Height blanket diagram



Figure 19 Section Plan demonstrating height non-compliance (highlighted in yellow)



Figure 20 Section Plan demonstrating height non-compliance (highlighted in yellow)



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Statement of environmental effects
Ref. M190153 35



As indicated, the height non-compliance is limited to the lift overrun and pergola. The proposed development is however considered to be generally consistent with the scale of development expected at the site.

Maximum height control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP.

Clause 4.6 Exceptions to Development Standards

The objectives and provisions of clause 4.6 are as follows:

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note.

When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).



(8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (b1) clause 4.3 (2A),*
- (b2) clause 4.4B (3),*
- (c) clause 5.4."*

The development standards in clause 4.3 are not "expressly excluded" from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8).

This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

Objectives for Clause 4.3 Height of Buildings

The objectives and relevant provisions of clause 4.3 are as follows, inter alia:

" 4.3 Height of buildings

- (1) The objectives of this clause are as follows:*
 - (a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*
 - (b) to ensure that taller buildings are appropriately located,*
 - (c) to ensure that building height is consistent with the desired future character of an area,*
 - (d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
 - (e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities."*

The *Height of Buildings Map* nominates a maximum height of 12m for the site. It is hereby requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum height of 13.8m for the development.

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of Clause 4.3 are addressed in turn below.

OBJECTIVE (A) TO ENSURE THAT THE BUILT FORM OF BOTANY BAY DEVELOPS IN A COORDINATED AND COHESIVE MANNER

The *Height of Buildings Map* indicates that the 12m height limit that applies to the subject site and also applies to land in the immediate vicinity within Zone B1. Zone B1 extends to the east and south of the site, beyond the B1 Zone is R2 Low Density Residential zone where building height transitions to 8.5m. At present, the built form within the block is characterised by a combination of older housing stock and commercial development with the approval for a three storey shop top housing development to the east at No.23 Swinbourne Street (DA-16/237). As such building heights are varied and no existing development takes up the maximum building height of 12m however, it is noted that DA-16/237 was approved with a variation to the maximum height limit.



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Statement of environmental effects
Ref: M180153 38



As mentioned, the maximum height of the proposal is 13.8m when measured to the top of the lift overrun and rooftop pergola. The structures are set in from the Swinbourne Street and Albert Street facades and therefore present as recessive elements that are not readily apparent from street level. The breach in roof height is a product of providing rooftop communal open space. Communal open space on the roof is encouraged by the ADG and provides superior amenity to future occupants of the development. Accessibility to the roof communal area in the form of lift and stairs is required, thereby requesting a variation to the building height control. The roof pergola will provide protection from the elements, which will increase useability and amenity of the development.

It is considered that the recently approved development at No.23 Swinbourne Street provides an indicative built form as envisioned by Council and it is anticipated that development at the adjoining site, No.19 Swinbourne Street will present similarly. Once the development has been completed within the neighbourhood centre it will present as a coordinated and cohesive streetscape, with acceptable built form outcomes.

OBJECTIVE (B) TO ENSURE THAT TALLER BUILDINGS ARE APPROPRIATELY LOCATED

The function of the *Height of Building Map* is, as suggested by objective (b), to identify appropriate locations for taller buildings. The *Height of Buildings Map* indicates that the maximum building height for the site is 12m and is therefore identified as a location where 'taller' buildings are appropriate. The proposal does not strictly comply with this requirement (hence the request to vary the development standard), however is not substantially taller than the height of buildings anticipated in this location. It is submitted that the proposal, which may be considered a 'taller' building, is appropriately located.

OBJECTIVE (C) TO ENSURE THAT BUILDING HEIGHT IS CONSISTENT WITH THE DESIRED FUTURE CHARACTER OF AN AREA

Much of the discussion provided against objective (a) is also relevant to this objective. In brief, the desired future character of an area is, to some degree, determined by the building envelope provisions that apply to the site. In this case, future development at No.23 Swinbourne is generally consistent with the 12m height with a minor variation proposed for the lift overrun and pergola structure. It is therefore conceivable that future development in the B1 Zone will have a building height of 12m. It is also conceivable that many sites with similar development forms will seek to vary building height (as seen at No.23 Swinbourne Street and as is anticipated at No.19 Swinbourne Street) to account for the ADG communal open space provision. It is considered that the proposal, although marginally non-compliant with building height, is consistent with the desired future character of the area, noting that the term 'consistent' does not necessarily mean 'the same as'.

OBJECTIVE (D) TO MINIMISE VISUAL IMPACT, DISRUPTION OF VIEWS, LOSS OF PRIVACY AND LOSS OF SOLAR ACCESS TO EXISTING DEVELOPMENT

Despite non-compliance, the proposal is designed and located to minimise visual impact, disruption of views, loss of privacy and loss of solar access to neighbouring development as described below:

- The lift overrun and rooftop pergola is set in from each street facade and therefore present as recessive elements that are not readily apparent from street level. The part of the building that is non-compliant with building height, does not contribute significantly to the visual bulk of the development. It is submitted that the difference between the proposal and a development that complies with building height will be negligible when viewed from the streetscape.
- It is understood that there are no significant views obtained from or through the site that will be obscured by the non-compliant aspect of the building.
- The lift overrun and pergola do not contribute to loss of visual privacy. The communal area is recessed from all boundaries and compliant building height elements of the building such as balconies are provided with privacy





screens. These features preclude cross viewing or overlooking of neighbouring properties therefore ensuring visual privacy.

- Solar access diagrams have been prepared and are submitted with the development application. The diagrams demonstrate that, although the building is marginally non-compliant in terms of building height, solar access to neighbouring properties is not unreasonably reduced as a result of the height increase. Due to site orientation the proposal does not excessively overshadow existing adjacent development.

As described above, although non-compliant with building height, the proposal is designed and located to minimise visual impacts, disruption of views, loss of privacy and overshadowing and therefore achieves the objective.

OBJECTIVE (E) TO ENSURE THAT BUILDINGS DO NOT ADVERSELY AFFECT THE STREETScape, SKYLINE OR LANDSCAPE WHEN VIEWED FROM ADJOINING ROADS AND OTHER PUBLIC PLACES SUCH AS PARKS, AND COMMUNITY FACILITIES

It is anticipated that the locality will undergo a period of transition as properties are redeveloped to take advantage of the zoning changes and generous height and density controls introduced through the LEP. As previously discussed, the height of the proposal is considered to be compatible with the anticipated future character of the B1 Zone locality and in this regard makes a positive contribution to the desired streetscape. Until such time as neighbouring and adjoining sites are also developed, the proposal will be a prominent element in the immediate streetscape however will not be evident in the skyline in the same way as a residential tower is visible from a distance.

The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.

Objectives for development in Zone B1 Neighbourhood Centre

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of the B1 Neighbourhood Centre zone are as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To ensure that development does not adversely impact on residential amenity and is compatible with the existing streetscape.*^a

The proposal will provide a medium density residential development that provides two small scale retail uses that serve the needs of people who live or work in the surrounding area. The proposal is a well-designed and sited shop top housing development that is compatible with the future scale and form of development of the surrounding area. The development also offers high levels of residential amenity and is entirely consistent with the intentions of the zone. As such the proposed development is entirely consistent with the zone objectives.

Environmental Planning Grounds

There is no planning purpose to be served by limiting the height strictly to the maximum height allowable given the absence of significant amenity related impacts and compliance with the standard and zone objectives.

With regards to Clause 4.6(3)(b), there are sufficient environmental planning grounds to justify contravening the maximum height standard of the LEP as follows:

- The non-compliant lift overrun and pergola elements are a functional aspect of the building, ensuring efficient access to the roof communal open space. The required ADG communal open space provides superior amenity to future occupants with weather protection.



- The discussions provided in this variation request have demonstrated that the marginal height breach will have no adverse impact on the character of the locality, the amenity of neighbouring properties. The lift overrun and pergola will not be readily visible, do not cast additional excessive shadows and do not give rise to privacy impacts nor does it result in view loss. In the absence of any adverse impact, it is considered that to require strict compliance with the development standard would, in this instance, be unreasonable and unnecessary; and
- To achieve compliance with the building height standard, the building would need to be reduced by a relatively insignificant margin of 1.8m. The visual bulk associated with the non-compliant 1.8m is negligible when compared to the visual bulk of a compliant scheme. The reduction in height would however have significant implications for the proposal as it would effectively preclude the rooftop communal open space reducing residential amenity.

It is noted that in *Initial Action Pty Ltd v Woolahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

Returning to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."



Planning Integrity Pty Ltd

Statement of environmental effects
Ref. M180153 61



Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied.

Consistency with state and regional planning policies and public benefit

The proposed variation does not raise any matters of regional or state significance. For the reasons outlined in the foregoing, in the circumstances of the subject site, the variation will not conflict any public benefit associated with maintaining the development standard. The variation to building height will have no adverse impact on neighbouring properties and is compatible with existing development and in keeping with the desired future character for the area. Given these circumstances, the proposed variation would not set an undesirable precedent or undermine the standard. The proposal exhibits a level of design excellence, therefore being consistent with the objects of metropolitan planning and the EP&A Act, 1979.



Bayside Design Review Panel

REPORT OF THE BAYSIDE DESIGN REVIEW PANEL

Meeting held on Thursday, 7 March 2019 at Bayside Council

[Panel members: Alf Lester, Sam Crawford and Dean Boone]

ITEM 4

Date of Panel Assessment:	7 March 2019
Applicant:	Swinbourne Pty Ltd
Architect:	AN+A Architects (Patrick Nicholas)
Property Address:	13A – 17 Swinbourne Street, Botany
Description:	Demolition of existing structures and construction of a three (3) storey shop top housing development comprising four (4) ground floor commercial tenancies, 20 dwellings, basement and ground floor parking and strata subdivision
No. of Buildings:	1
No. of Storeys:	3
No. of Units:	20 - 12 x 1 bedroom units and 8 x 2 bedroom units
Consent Authority Responsible:	Bayside Council
Application No.:	DA-2018/378
Declaration of Conflict of Interest:	Nil

The Panel inspected the site, reviewed the submitted documentation and met with representatives of the applicant including Patrick Nicholas (Director AN & A), Dustin Cashmore (Project Coordinator AN & A), Andrew Hatzidis (Director Biali Concept), Alison Davidson (Principal Planner Planning Ingenuity), James Lunney (Director Swinbourne Pty Ltd), Patrick Nash (Council's Senior Development Planner) and Chris Mackey (Council's Coordinator Development Assessment).

Design Principle	Comments
<p>Context and Neighbourhood Character</p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The Panel considered that generally the development proposal provides for a quality development and indicated support of the overall scheme. The Panel noted the non-compliance with the 3000mm setback (DCP) at the upper level but concluded that the proposed built form provided appropriate articulation and represented a design response that was compatible with the emerging local neighbourhood context.</p>
<p>Built Form and Scale</p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>As noted, the Panel is supportive of the non-compliance with the DCP setback based on the proposed finishes and built form articulation.</p> <p>Design issues raised by the Panel include:</p> <ul style="list-style-type: none"> • The general interface between residential and commercial usages on the site and lack of separation with the ground floor layout favouring the commercial tenancies usages • The residential lobby to the ground floor should be separated from commercial usages and clearly defined • Commercial tenancy access should not utilise the residential lobby entry • Waste storage facilities need to be reconfigured so that commercial waste is not in direct conflict with residential access and residents do not need to pass through commercial car parking to access their facilities • Accessible parking in the basement carpark should be reconfigured to provide a more usable and safer design outcome with close proximity for lift access and no interface with vehicular movements • Integration of units 108 and 208; the current arrangement results in privacy issues and poor design amenity • Lift lobbies require natural light and ventilation. The current configuration does not achieve this and is not supported • The use of planter boxes linked to the external façade was questioned in terms of suitability and maintenance • The scale of hardscape proposed in the deep soil zone negates the purpose of deep soil and results in non-compliance and reduced useability of the space by residents. The proximity of the deep soil zone to commercial usage and parking was questioned. • Private stairwells and private open spaces on the rooftop were not supported. The rooftop communal and private open spaces should be amalgamated to create a well-designed, dynamic, defined communal open space

Design Principle	Comments
<p>Density</p> <p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>The Panel was generally supportive of the proposed density on site. It was noted that the recommended amalgamation of units 108 and 208 would slightly reduce the resident population and secure enhanced amenity.</p>
<p>Sustainability</p> <p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The Panel noted that there are further opportunities to include sustainability initiatives in the design above and beyond those required by BASIX, such as solar energy generation to a revised rooftop scheme.</p> <p>The Panel noted that the nominated deep soil zone provides for the retention of existing trees. However the Panel did not support the extensive paving identified in the landscape design which defeats the objectives associated with the provision of deep soil zones.</p> <p>The Panel also noted that one of the retained trees is in close proximity to the built form and that a root protection zone needs to be considered.</p> <p>The deep soil zone would also benefit from an increased emphasis on soft landscaping and provision of new large scale canopy trees.</p>
<p>Landscape</p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>The Panel noted inconsistencies between the landscape plans provided and architectural plans. The documents should be revised in accordance with the comments below:</p> <ul style="list-style-type: none"> • Revision of the Ground floor landscape deep soil zone (which the Panel did not consider an active communal open space) is required. "Permeable paving" in this area is not supported. An emphasis on softscape as a landscape treatment is supported in contrast to an active communal open space with a poor interface with commercial uses • Planter boxes to the façade treatment need an adequate depth and width to support plant material. The documentation provided is unclear and it appears the sizes proposed are too small. In addition the long term maintenance and ease of access of these planter boxes is questioned • Revision of the communal rooftop open space as outlined above, noting the current rooftop communal open space indicates trees that are located under a solid roof structure and are not suitable
<p>Amenity</p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving</p>	<p>The Panel considered the amenity of the proposed development would be improved by:</p> <ul style="list-style-type: none"> • Increased separation between residential and commercial uses at the ground floor level

Design Principle	Comments
<p>good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<ul style="list-style-type: none"> • A signage strategy incorporated into the DA which is designed to maintain the architectural quality of the façade • Amalgamation of unit 108 and 208 • Internal redesign to ensure natural light and ventilation to the lift lobby area • Deletion of private stairwells and POS on the rooftop • Redesign and arrangement of the rooftop communal area to provides for a meaningful open space and shade as well as providing for solar passive energy generation
<p>Safety</p> <p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The Panel noted three key areas of concern:</p> <ul style="list-style-type: none"> • Ground floor interface between residential and commercial uses • Privacy and poor surveillance issues between units 108 and 208 • Poor relationship of spaces to the rooftop POS and COS uses
<p>Housing Diversity and Social Interaction</p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The Panel was generally supportive of the apartment mix. Social interaction could be enhanced by providing clarity/security for the residential entry lobby and minimising conflicts with commercial functions.</p>
<p>Aesthetics</p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The Panel was generally supportive of the proposed design subject to the comments above.</p>

RECOMMENDATION

- The Panel supports the application subject to the changes described above.

Bayside Local Planning Panel

10/09/2019

Item No	6.4
Application Type	Review of Determination
Application No	S82-2019/6
Lodgement Date	21/06/2019
Property	3-5 Queen Street, Botany
Ward	Ward 2
Owner	Mr C W Hillier & Ms S G Monk
Applicant	Botany Terraces Pty Ltd – Mr Philip Tian
Proposal	Demolition of existing structures and construction of four (4) semi-detached dwellings, two (2) swimming pools and Torrens title subdivision into 4 lots
No. of Submissions	One (1)
Cost of Development	\$2,017,949
Report by	Michael McCabe, Director City Futures

Officer Recommendation

- 1 That the Bayside Local Planning Panel, exercising the functions of the Council as the Consent Authority, pursuant to Division 8.2, relating to Development Application S82-2019/5 for a review of determination, resolve to change the decision for Refusal of the Development Application DA-2018/1169, pursuant to Section 8.4 of the Environmental Planning and Assessment Act 1979.
 - 2 That the Bayside Planning Panel support the variation to the FSR development standard, as contained in Clause 4.4 – FSR of Botany Bay LEP 2013, in accordance with the request under clause 4.6 of BBLEP 2013 submitted by the applicant.
 - 3 That development application S82-2019/6 for the demolition of existing structures and construction of four (4) semi-detached dwellings, two (2) swimming pools and Torrens title subdivision into 4 lots at 3-5 Queen Street, Botany be APPROVED pursuant to S4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
 - 4 That the objector be notified of the Bayside Planning Panel decision.
-

Location Plan



Attachments

- 1 s8.2 Planning Assessment Report [↓](#)
- 2 Draft Conditions [↓](#)
- 3 Statement of Environmental Effects [↓](#)
- 4 Site Plan, Site Analysis & Roof Plan [↓](#)
- 5 Subdivision Plan [↓](#)
- 6 Landscape Diagram [↓](#)
- 7 Streetscape Elevation [↓](#)
- 8 Streetscape Analysis [↓](#)
- 9 GFA Diagram [↓](#)
- 10 Sections [↓](#)
- 11 Elevations [↓](#)
- 12 Internal Elevations dwellings 2 and 3 [↓](#)
- 13 Eastern Elevational Shadows on 7 Queen [↓](#)
- 14 Shadow Diagrams 9-12pm Midwinter [↓](#)
- 15 Shadow Diagrams 1-3pm Midwinter [↓](#)
- 16 Original Report for Refusal [↓](#)
- 17 Original Notice of Refusal [↓](#)
- 18 Refused Subdivision Plan [↓](#)

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:

Date of Receipt: 21 June 2019

Property: 3-5 Queen Street Botany
Lot B DP 150047, Lot C DP 150047

Owners:

Applicant: Botany Terraces Pty Ltd – Mr Philip Tian

Proposal: Review of Determination of DA-2018/1169.
Demolition of existing structures and construction of four (4) semi-detached dwellings, two (2) swimming pools and Torrens title subdivision into 4 lots

Recommendation: Approval subject to conditions

Value: \$2,017,949.00

No. of submissions: One (1)

Author: Fiona Prodromou – Senior Assessment Planner

Date of Report: August 2019

Key Issues

On 9th April 2019, the Bayside Local Planning Panel Refused DA-2018/1169 which sought consent for the demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of five (5) attached dwellings, swimming pool and two (2) cabanas at 3-5 Queen Street, Botany.

A S8.2 – Review of Determination application was submitted to Council on 21 June 2019. The proposal as revised seeks to review the original decision and proposed the demolition of existing structures and construction of four (4) semi-detached dwellings, two (2) swimming pools and Torrens title subdivision into 4 lots.

The application was placed on public exhibition for a 14 day period from the 27 June to 15 July 2019. One submission was received, the issues raised are discussed further in this report.

The proposal seeks to modify the maximum 0.5:1 FSR standard permitted for the subject site. The proposal seeks an overall FSR of 0.57:1 across the entire site, this represents a variation of 7.4% and a surplus floor area of 78.85sq/m across the entire property.

The applicant has submitted a Clause 4.6 – Exception to Development Standard, key arguments for the proposed variation have been detailed within this report. The FSR variation is supported in this instance for the reasons outlined within this report.

The primary issue with respect to the proposed development is the matter of subdivision pattern. The proposal does not comply with the following objective or requirements of Part 3E.2.2 – Residential Torrens Title of Botany Bay DCP 2013;

Item Bayside Planning Panel Meeting

- a) Objective "O2 - To ensure the proposed subdivision is consistent the existing or prevailing subdivision pattern"
- b) Requirement "C2 – Proposed subdivision or amalgamation must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area, dimensions, shape and orientation."

Notwithstanding the above, the assessing officer is of the view that there are extenuating circumstances in this instance and merit in the proposal, which enable the proposed redevelopment and subdivision pattern as proposed to be supported. This has been discussed further in detail within this report.

The subject site is oriented east / west as such, the property directly adjoining the site to the south (7 Queen Street) will experience a loss of solar access as a result of the proposal. A detailed assessment has been undertaken further in this report and the proposal is supported on merit.

One (1) submission has been received in relation to the proposal, issues raised have been considered in this report.

The proposal is recommended for Approval for the reasons outlined within this report.

Recommendation

1. That the Bayside Local Planning Panel, exercising the functions of the Council as the Consent Authority, pursuant to Division 8.2, relating to Development Application S82-2019/5 for a review of determination, resolve to change the decision for Refusal of the Development Application DA-2018/1169, pursuant to Section 8.4 of the Environmental Planning and Assessment Act 1979.
2. That the Bayside Planning Panel support the variation to the FSR development standard, as contained in Clause 4.4 – FSR of Botany Bay LEP 2013, in accordance with the request under clause 4.6 of BBLEP 2013 submitted by the applicant.
3. That development application S82-2019/6 for the demolition of existing structures and construction of four (4) semi-detached dwellings, two (2) swimming pools and Torrens title subdivision into 4 lots at 3-5 Queen Street, Botany be APPROVED pursuant to S4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
4. That the objector be notified of the Bayside Planning Panel decision.

Background

History

DA-2018/1169 – Refused 9 April 2019 – Bayside Planning Panel

Demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of five (5) attached dwellings, swimming pool and two (2) cabanas at 3-5 Queen Street, Botany.

21 June 2019 – s8.2 Application submitted to Council

Demolition of existing structures and construction of four (4) semi-detached dwellings, two (2) swimming pools, detached cabanas and Torrens title subdivision into 4 lots.

13 August 2019

Revised plans submitted deleting cabanas from rear of properties.

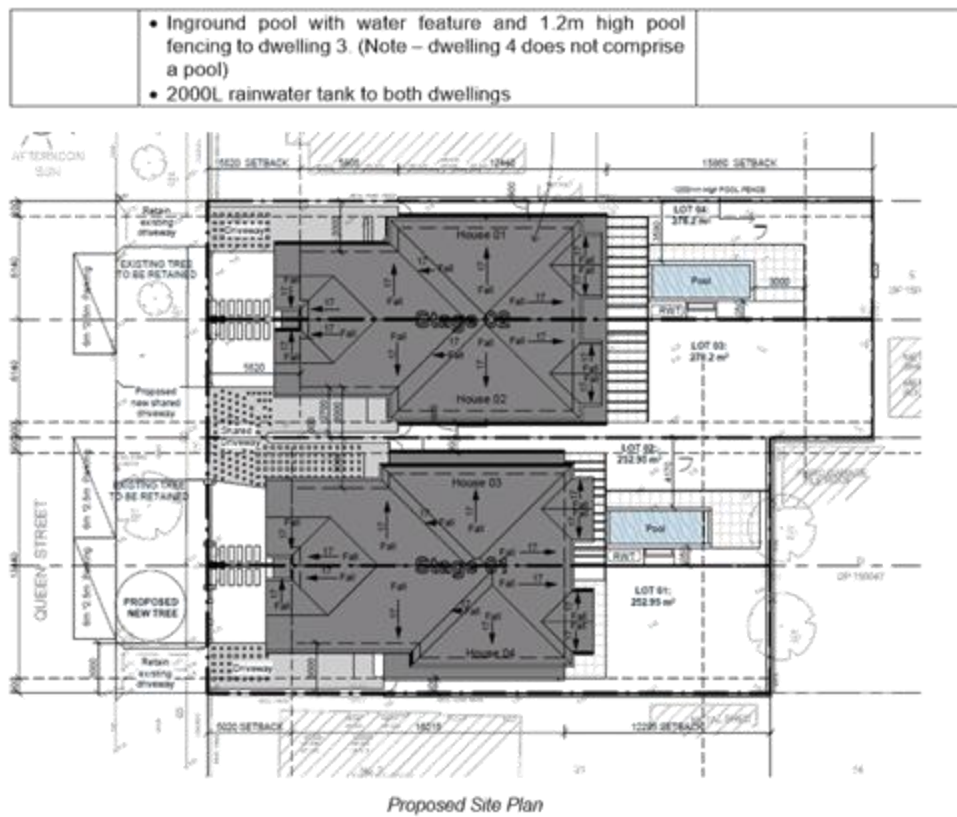
Description of Proposal

The proposal seeks the demolition of existing structures and construction of four (4) semi detached dwellings, two (2) swimming pools and Torrens title subdivision into 4 lots.

The proposal comprises as follows;

- Demolition of all existing physical structures on site.
- Torrens title subdivision of two existing lots into four new allotments of land.
- Construction of four x two storey semi detached dwellings as follows;

	Ground Floor	First Floor
Dwellings 1 & 2	<ul style="list-style-type: none"> 1 x open car space per dwelling with retention of existing driveway to Queen Street for dwelling 1. Dwelling 2 will share a common driveway with dwelling 3. Screened (timber battens) waste storage area adjoining bedroom 1 Front porch with adjoining living room fronting queen street Bedroom 1 with BIR and adjoining powder room Open plan kitchen, dining and living area with adjoining pantry / laundry combination. Rear alfresco area with bbq and timber framed pergola over. Inground pool with water feature and 1.2m high pool fencing. <i>(Note – dwelling 2 does not comprise a pool)</i> 2000L rainwater tank to both dwelling 	<ul style="list-style-type: none"> Three Bedrooms, main with ensuite, WIR and rear facing balcony. Subsequent bedrooms with BIR, bedroom 2 with street facing balcony. Linen cupboard and associated storage within corridor
Dwellings 3 & 4	<ul style="list-style-type: none"> 1 x open car space per dwelling. Dwelling 3 is to share a common driveway with dwelling 2. Dwelling 4 will retain an existing driveway to Queen Street. Screened (timber battens) waste storage area adjoining laundry of dwellings Powder room. Front porch, bedroom 1 (dwelling 3) with BIR adjoining, bedroom 1 (dwelling 4) with ensuite and WIR. Open plan kitchen, dining and living area with adjoining pantry / laundry combination. Rear alfresco area with bbq and timber framed pergola over. 	<ul style="list-style-type: none"> Three Bedrooms, main with ensuite, WIR and rear facing balcony. Subsequent bedrooms with BIR, bedroom 2 with street facing balcony. Linen cupboard and associated storage within corridor Void to ground level entry foyer



Photomontage of proposed development

Site Description

The sites are legally known as Lot B DP 150047 and Lot C DP 150047. The subject site is located on the eastern side of Queen Street between Morgan Street to the north and Hambly Street to the south. The lot has an east to west orientation with the western side facing the street frontage and the eastern side facing the rear boundary. The site is located in the R2 Low Density Residential Zone.



3 Queen Street is rectangular in shape with a total site area of 556.4sq/m (site survey) and a street frontage and rear boundary width of 14.085m. Its northern and southern boundaries are 39.625m in length.

5 Queen Street is also rectangular in shape with a total site area of 505.9sq/m (site survey) and a street frontage and rear boundary width of 15.24m. Its northern and southern boundaries are 33.53m in length. Both sites are relatively flat in topography.

Existing development at 3 Queen Street comprises of a single storey detached weatherboard dwelling with a clad garage and clad shed at the rear of the site.

Existing development at 5 Queen Street comprises of a single storey brick rendered detached dwelling house with tile roof, and a detached brick shed and above ground swimming pool at the rear of the site.



Subject site

There are two (2) trees located within the nature strip of the site which are to be retained and protected. There are also a number of trees within the adjacent lots which are to be retained and protected. Both sites have a combined site area of 1062.3sq/m and a combined frontage of 29.3m.

The adjoining site at 1 Queen Street contains a single storey detached brick dwelling, and the adjoining site at 7 Queen Street contains a brick and weatherboard clad two storey detached dwelling with metal shed in the rear.



1 Queen Street



7 Queen Street

The sites abutting to the rear include 11A Morgan Street, 11 Morgan Street and 33 Victoria Street which all contain single storey dwellings. Development surrounding the site comprises single and double storey detached dwellings upon rectilinear lots.

Statutory Considerations

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

Division 8.2 – Reviews

S.8.3 - Application For and Conduct of Review

The subject application was submitted to Council for review within the time period required by the legislation. The proposal is presented to the Bayside Local Planning Panel for determination in line with the requirements of this part.

The applicant has made some amendments to the proposed development. However, Council remains satisfied that the proposal is substantially the same development in accordance with the requirements of this clause.

S.8.4 – Outcome of Review

The application has been reviewed and it is recommended that the initial refusal decision is overturned.

8.5 – Miscellaneous Provisions Relating to Reviews

The miscellaneous provisions have been considered and noted. No further comments are made in this regard.

S.4.15(1) - Matters for Consideration – General**S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. 957459M_05 dated 21 May 2019 committing to environmental sustainable measures. The proposal is satisfactory with regards to the SEPP.

State Environmental Planning Policy Infrastructure 2007

According to Council's mapping system the subject site is located within the zone of influence of the Moomba to Sydney High Pressure Gas Pipeline.

As such the relevant provisions of the SEPP apply as follows:

Clause 55 - Development adjacent to corridor

(1) *Before determining an application (or any application for modification of a consent) for development adjacent to a gas pipeline corridor, the consent authority must:*

(a) *be satisfied that the potential safety risks or risks to the integrity of the pipeline that are associated with the development or modification to which the application relates have been identified, and*

Comment: The proposal was referred to the APA Group on 4 July 2019.

(b) *take those risks into consideration.*

Comment: The risks associated with the proposed redevelopment of the site have been taken into consideration and are deemed to be minimal.

(2) *In this clause, gas pipeline corridor means any land:*

(a) *Within the licence area of a gas pipeline licensed under the Pipelines Act 1967, or*

(b) *Within 20m (measured radially) of the centreline of any of the Moomba to Sydney Pipeline System*

Comment: The development is located approximately 63m west of the closest point of the Moomba – Sydney Ethane Pipeline, and therefore APA has no concerns regarding any direct impact on the pipeline or easement, as a result of the development and construction activity.

The proposed development is within the pipeline measure length (area of consequence), and Council's gas pipeline buffer area. However, APA has no concerns on this basis, given the development:

(a) *is not for a sensitive use under AS2885 ("use by members of the community who may be unable to protect themselves from the consequences of a pipeline failure")*

(b) *does not change the land use classification (under AS2855) from the current Residential (T1) classification.*

Given the above, the proposal is consistent with the provisions of the SEPP.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of this application. The subject site does not comprise a history of contamination and the properties have been continuously used for residential purposes. In this regard the subject site is deemed suitable for the proposal and satisfactory with regards to the SEPP.

Botany Bay Local Environmental Plan 2013

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

Clause	Requirement	Proposal	Compliance
2.3 – Zone	R2 – Low Density Residential	<i>Semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling</i>	Yes
2.6 – Subdivision	Consent required	Consent sought	Yes
2.7 – Demolition	Requires consent	Demolition sought	Yes
4.3 – Height of Buildings	8.5m	16.501RL max ridge height – Dwellings 1 & 2 Height = 8.2m	Yes
		16.582RL max ridge height – Dwellings 3 & 4 Height = 8.3m	Yes
4.4 – FSR	0.5:1 (Area 3) (531.15sq/m total GFA across both sites)	GFA Proposed = 610sq/m Surplus GFA = 78.85sq/m FSR Proposed = 0.57:1 Variation = 7.4%	No – Refer to discussion below.
	D1 / D2 Proposed Site Area = 278sq/m Max 139sq/m GFA per proposed lot.	154sq/m GFA per dwelling. 0.55:1 FSR per proposed lot. 15sq/m surplus GFA per proposed lot (5.3% variation per proposed lot)	
	D3/D4 Proposed Site Area = 252.9sq/m Max 126.4sq/m GFA per proposed lot.	151sq/m GFA per dwelling. 0.59:1 FSR per proposed lot. 24.6sq/m surplus GFA per proposed lot. (9.7% variation per proposed lot)	
4.6 – Exception to Development Standards	(a) compliance is unreasonable or unnecessary in the circumstances of the case, and; (b) there are sufficient environmental planning grounds to justify contravening the standard.	Refer to discussion below	Yes
6.1 – Acid Sulfate Soils	Class 4 - ASS <i>Excavation does not extend >2m below natural ground level (NGL) and water table is unlikely to be lowered more than 2m.</i>	Max. excavation 1.8m	Yes
6.2 – Earthworks	Earthworks not to have detrimental impact	Minimal earthworks proposed on site	Yes

Clause	Requirement	Proposal	Compliance
6.3 – Stormwater Management	Minimise impacts of urban stormwater	Conditions imposed to ensure appropriately designed stormwater system	Yes
6.8 – Airspace Operations	Affected by 51 OLS	Max RL = 16.582RL Does not penetrate OLS	Yes
6.9 – Aircraft Noise	20-25 ANEF Contour	Acoustic Report recommends amelioration measures	Yes – proposal conditioned.

Clause 4.6 – Exception to Development Standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

(3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

(3)(b) that there are sufficient environmental planning grounds to justify the variation.

In considering the applicant's submission, the consent authority must be satisfied that:

(i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.

5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and

5(b) the public benefit of maintaining the development standard.

Consideration has been given to a number of Land & Environment Court judgements in the assessment of the application, which specifically relate to variations of development standards.

In *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe)*, the Land and Environment Court set out 5 different ways in which an objection to a development standard may be well founded.

Consideration has also been given to the Land and Environment court judgement *Four2Five v Ashfield Council [2015] NSWLEC 90* where it was established that justification was required in order to determine whether the development standard was unreasonable or unnecessary on grounds other than whether the development achieved the objectives of the development standard. Consideration is to be given to the particular site circumstances of the proposal.

Finally, consideration has further been given to *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, which seeks to ensure that the applicants request adequately addresses clause 4.6 and whether the proposed contravention is in the public interest.

Variation Sought

As previously discussed within this report, the subject site is permitted an FSR of 0.5:1 given its location in Area 3. This is equivalent to a maximum gross floor area of 531.15sq/m total GFA across both sites.

As detailed above within the compliance table, an assessment has been undertaken with respect of FSR and GFA on the overall site and as is proposed to be subdivided. The following information was derived;

a) Entire Site

The proposal comprises an FSR of 0.57:1 (610sq/m GFA). This is a 7.4% variation (78.85sq/m) to the maximum permitted 0.5:1 FSR standard.

b) Proposed Lots 1 & 2

- i. Each dwelling comprises 154sq/m of GFA, which equates to an FSR of 0.55:1 per proposed lot. This is a 5.3% (15sq/m) variation to the FSR standard per proposed lot.

c) Proposed Lots 3 & 4

- i. Each dwelling comprises 151sq/m of GFA, which equates to an FSR of 0.59:1 per proposed lot. This is a 9.7% (24.6sq/m) variation to the FSR standard per proposed lot.

Applicants Justification

A summary of the applicants key arguments supporting the additional FSR are as follows:

- Each dwelling complies with the LEP height limit and DCP setback controls for the subdivided lots. The 2 storey scale is also consistent with the scale of development anticipated by the controls. It is therefore considered that the proposed bulk and scale of the dwellings is consistent with that anticipated by the controls, and consistent with the bulk and scale envisioned by the Low Density Residential zoning.
- The proposed built forms will present as 2-storeys to Queen Street, thereby being compatible with or subservient to the mixed character of the street, as demonstrated on the streetscape elevation
- The proposed FSR variations are contained within two built forms which are of a scale and form that is compatible with the existing development along Queen Street. The proposed subdivision pattern and compliant side setbacks reinforce the rhythm of the existing and desired streetscape.
- The FSR variation is not responsible for any greater amenity impacts to neighbouring properties beyond those associated with a compliant FSR in regard to view loss, overshadowing and privacy. It is reiterated that the FSR variation is contained within a compliant building envelope.
- It is considered that the proposed bulk and scale of the semi-detached dwellings is modest in comparison to if 4 individual dwellings were proposed which can have an FSR of up to 0.75:1 on lots with an area of 251sq/m – 300sq/m.
- Council have supported variations to the FSR standard in the past for semi-detached dwelling developments, including at 12 Hambly Street, Botany (2017/1158, 0.67:1 and 0.59:1 approved), and 79 Middlemiss Street, Mascot (DA-2017/1023, 0.67:1 for each dwelling approved). The proposed FSR variations are less than these approvals.
- The high-quality design and colours, materials and finishes, combined with a compliant level of landscaping on each site softens the visual bulk of each dwelling.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning.
- The proposed FSR variation allows all dwellings to achieve high internal amenity without compromising the external amenity of neighbouring properties. If strict compliance with the FSR standard was required, reducing the floor space of each dwelling by 15 sqm (Dwellings 1/2) and 25.5sqm (Dwellings 3/4) would compromise the high-level of internal amenity achieved and the reduction would not result in any discernible improvement to the amenity of neighbouring properties, particularly as the proposed semi-detached dwellings already comply with the LEP height limit and DCP setback controls.

- *The articulated facades and provision of landscaping within the front, side and rear setbacks softens the visual appearance of the built forms and retains the character of the area as intended by the controls*
- *In addition to the above, compliance with the DCP open space and deep soil planting controls demonstrate that there are sufficient environmental grounds to permit the FSR variation in this instance.*
- *There is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.*

Discussion

The applicants request has adequately addressed the provisions of Clause 4.6(3)(a) and (b). Following a review of the application, the FSR variation as revised is deemed appropriate for the following reasons:

- The FSR provision of Clause 4.4A(3)(a) permits the following FSR standard for dwelling houses, within Area 3;
 - 0.75:1, on lots with a site area of 251-300sq/m post subdivision.

The proposal seeks to subdivide the property as follows and provide an FSR relative to each lot, to that which would otherwise be permitted by the aforementioned clause for a dwelling house;

- D1 & D2 = 278sq/m (0.55:1 across post subdivided lot)
- D3 & D4 = 252.95sq/m (0.59:1 across post subdivided lot)

The proposal is for semi-detached dwelling forms, whilst these are residential in nature, they are categorised as '*residential accommodation*' via the definitions of BBLEP 2013.

In essence the proposed semi-detached dwellings are a type of dwelling house as they are capable of being occupied and owned independently of each other.

The overall bulk, scale, density and building typology proposed is akin to that which could otherwise be achieved via a proposed dwelling house form, which, simply by means of definition, would be eligible for a greater FSR than that for '*semi-detached dwellings*'.

Given the above, the FSR proposed is appropriate to the size of the proposed lot and the proposed variation is not unreasonable.

- Whilst the proposal exceeds the maximum density permitted on the subject site the resulting height, bulk, scale, setbacks, rhythm, mass and form of the development are entirely consistent with the future desired character of the area and typology of building forms which exist and could otherwise be achieved within Area 3 as depicted below.



The development will retain an appropriate visual relationship with the surrounding area, which is undergoing transformation to incorporate a greater diversity of housing forms and types.

- c) The subject site is of sufficient orientation, shape, area and allotment width so as to accommodate the proposed development. Additionally, the scale and extent of the proposed additional density is not inconsistent with previous approvals within the context of the subject site. The FSR standard for semi-detached dwelling forms within the locality has previously been varied.
- d) The proposal is consistent with the objectives of Clause 4.4 - FSR, and does not result in adverse environmental effects upon the use or enjoyment of adjoining properties.
- e) The proposal is consistent with the objectives of the R2 – Low Density Residential zone in that the development provides an increase in housing stock in order to provide for the housing needs of the community within a low density residential environment.
- f) The layout of dwellings as designed ensures that solar access and natural ventilation is maximised and that internal amenity for future occupants is optimised.
- g) The proposed development does not result in adverse streetscape nor amenity issues to neighbouring properties.
- h) The development is located in an accessible location, with access to public transport nearby, public open spaces including Garnet Jackson Reserve to the east and Pagewood Public School which is within 650m of the site. The proposal is therefore in the public interest.

Given the above, the consent authority can be satisfied that the provisions of clause 4.6(4) have been achieved and that the clause 4.6 is well founded. The FSR standard in the circumstances of this case is considered to be unreasonable and unnecessary and the proposed variation is supported on the basis of the above by the assessing officer.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no current Draft EPIs applicable to this development or the subject site.

S.4.15(1)(a)(iii) - Provisions of any Development Control Plan

Botany Bay Development Control Plan 2013

The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013 as follows:

Part 3A – Parking & Access			
Part	Control	Proposed	Complies
3A.2 – Parking Provision	C2 – Semi-detached dwellings = 1 space per dwelling	1 car space per dwelling	Yes
3A.3.1 – Car Park Design	C10 - Off-street parking facilities are not permitted within the front setbacks	Nil parking facilities within front setback	Yes

	C12 - Off-street parking facilities must not dominate the streetscape and are to be located away from the primary frontages of the site.	Open parking spaces – nil physical structures proposed	Yes
	C26 - Min driveway width 3m	Min 3m width driveway to each proposed site / dwelling	Yes
Part 3E- Subdivision & Amalgamation			
Part	Control	Proposed	Complies
3E.2.2 - Residential Torrens Title	C1 - Proposed subdivision shall be consistent with the Desired Future Character of the area	Satisfactory	Yes
	C2 – Proposed subdivision must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area, dimensions, shape and orientation	The proposed lots are rectangular in shape and have a minimum 7m frontage to Queen Street. The area and dimensions of the proposed lots are not similar to the prevailing subdivision pattern of existing lots.	No – see discussion below.
	C3– Must be accompanied by conceptual building plan that demonstrates compliance with relevant building controls.	Building Plans for the new lots are proposed, have been submitted to Council and demonstrate compliance with relevant controls, excluding FSR which has been addressed previously.	Yes
	C5 – Proposed lots must be of a size / dimension to enable siting / construction of dwelling & ancillary structures that: i) Acknowledge site constraints ii) Address the street iii) Minimize impacts on adjoining properties including access to sunlight, daylight, privacy and views iv) Provide usable private open space v) Protect existing vegetation vi) Mitigate potential flood affectation and stormwater management requirements vii) Acknowledge contamination of the land viii) Protect heritage items.	The proposed allotments are capable of accommodating the proposed dwellings & ancillary structures which acknowledge the requirements & constraints referred to in C5.	Yes
	C7 - All lots created shall have at least one (1) frontage to the street.	All proposed lots have a frontage to Queen Street	Yes

Non Compliance

3E.2.2 - Residential Torrens Title

The subject sites are of overall width and area, so as to facilitate the proposed subdivision into 4 new allotments, each with a minimum frontage of 7m.

Whilst as existing, there are nil allotments within the subject street block of such width, contrary to the requirements of BBDCP 2013, an analysis of the street block bound by Morgan, Queen, Hambly and Victoria Streets identifies that there is possibility, albeit limited, for further redevelopment within the subject street block on limited individual existing lots and subject to the future amalgamation of two existing lots with a minimum frontage of 12m, in order to facilitate a future post subdivision minimum allotment width of 7m, consistently throughout the street block akin to the proposed development.

An analysis of the subject street block identifies as follows;

- a) The number of existing allotments with a minimum 15m width, akin to each of the existing lots subject of this application are limited within the subject street block. i.e. 6 maximum, identified by a yellow X below.
- b) Lots with a minimum width of 15m could facilitate redevelopment for 2 semi-detached dwellings, each with a minimum post subdivision lot width 7m.
- c) Of the 6 properties referred to in (a), with a minimum 15m lot width in this street block, 5 directly adjoin the subject site to the east, north and south. As identified by a yellow X below.
- d) Of the 6 properties referred to in (a), the assessing officer is of the view that 4 may have the potential to be independently redeveloped for 2 x semi – detached dwellings, with a resultant minimum post subdivision lot width of 7m, whilst the remaining 2 are too shallow to warrant redevelopment of the sort.
- e) The assessing officer is of the view that the properties at 7 Queen Street to the south and 31-33 Victoria Street to the east, may be capable of redevelopment for 2 semi-detached dwellings per site, given the existing minimum allotment width of these properties.
- f) Whilst properties at 11-11A to the north fronting Morgan Street, comprise an existing lot width of >15m, the sites are constrained by their shallow depth, as such these properties are likely incapable of being redeveloped.



Yellow X – Properties with min lot width of 15m in subject street block

Taking into consideration the above, should the proposal be supported, it is evident that limited lots can be redeveloped independently within the subject street block, in order to result in a minimum post subdivision lot width of 7m.

The remaining lots within the street block would require at minimum, the amalgamation of two existing lots which would result in a combined lot width of 24m. Two combined lots could potentially be redeveloped in a similar manner, resulting in three lots post subdivision, with a minimum lot width of 8m each.

Given the above, and should the proposal be supported, it is likely that a minimum consistent post subdivision lot width of 7m – 8m is possible within the subject street block, pending the future amalgamation and redevelopment of sites within the subject street block.

Further to the above, an analysis of the local context, including the approved post subdivision lot size and width of properties nearby has been undertaken and it is identified that a range of properties within the immediately surrounding area comprise or have been approved to comprise lot width of up to a minimum of 5.5m and site area of up to 197.09sq/m.

Given the above, the proposed subdivision pattern is not dissimilar to lots which exist and have been previously subdivided within context of the site. The proposed subdivision is consistent with the future subdivision pattern in the immediate context of the subject site. Furthermore, the proposal is deemed compatible with existing and emerging 2 storey built forms within the context of the site.

In conclusion, the proposed development is found to be satisfactory and consistent with the general objectives and requirements of Part 3E.2.2 – Residential Torrens Title of BBDCP 2013, with the exception of "O2" and "C2" as discussed below.

The proposal is not inconsistent with the future desired character of the area, does not result in unsatisfactory impacts on site or to neighbouring properties nor does the proposal adversely impact upon the orderly economic use or redevelopment potential of neighbouring properties.

Whilst the proposal is inconsistent as existing with the following components of this Part of the DCP;

- c) Objective "O2 - To ensure the proposed subdivision is consistent the existing or prevailing subdivision pattern"
- d) Requirement "C2 – Proposed subdivision or amalgamation must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area, dimensions, shape and orientation."

It is the assessing officer's view, given the arguments presented above, there are sufficient site and contextual circumstances and merit in supporting the proposed application.

It is deemed unlikely that the proposal has the potential to result in an unsatisfactory precedent, as a minimum post subdivision lot width of 7m will be established within the subject street block.

The proposed development is supported on the basis of the above and a variation to the DCP requirement in this instance is deemed warranted.

3G – Stormwater Management			
Part	Control	Proposed	Complies
3G.2 – Stormwater Management	C2 Stormwater runoff generated from the development shall be collected & discharged in accordance with Council's Stormwater Management Technical Guidelines.	Council's Development Engineer raised no objections to the proposed management of stormwater on the site. Appropriate conditions of consent have been imposed to ensure appropriate management of stormwater from the site in accordance with Council's Stormwater Management Technical Guidelines.	
Part 3N – Waste Minimisation & Management			
Part	Control	Proposed	Complies
3N.2 – Demolition and Construction	C1 – Site waste management plan to be submitted	A WMP was provided to Council, which details construction waste to be generated. Conditions of consent are imposed to ensure waste generated during construction is stockpiled, managed and disposed of appropriately.	Yes
3N.3(3.2) – Residential Development	C2 - Waste / recycling areas must be located in a position convenient for users & waste collection personnel	Appropriately located and screened bin storage areas provided on site in convenient location with access close to the street.	Yes
Part 4A – Dwelling Houses			
Part	Control	Proposed	Complies
4A.2.3 – Local Character	C2 Development must comply with the relevant Desired Future Character Statements in Part 8 - Character Precincts.	Refer to Character and Streetscape discussion below.	Yes
4A.2.4 – Streetscape Presentation	C3 - Dwellings must reflect dominant roof lines and patterns of the existing streetscape.	Roof design & pitch consistent with dominant roof lines & streetscape. Refer to further discussion in Part 8 – Botany Character Precinct.	Yes
	C4 - Buildings must address the street.	Buildings address the street.	Yes
	C6 - Dwellings front door is to be readily apparent from the street.	Front door readily apparent	Yes
4A.2.7 – Site Coverage	C2 - Maximum site coverage - All dwellings = 60% of the lot	Dwelling 1 = 41% Dwelling 2 = 35% Dwelling 3 = 44% Dwelling 4 = 38%	Yes
4A.2.8 – Building Setbacks	C1 – <u>Front</u> – min 6m or as per prevailing street setback	<i>Front</i> 5m – 5.5m setback consistent with neighbouring building forms.	Yes
	<u>Side</u> – Merit assessment, depending on visual impact to streetscape	0.9m – 3m – Ground Level 1.575m – 3m – First Floor	Yes Yes

	Rear – 4m	Dwellings 1 / 2 = 13.4m Dwellings 3 / 4 = 9.8m	Yes Yes
4A.2.9 – Landscaped Area	C2 – 20% (55.64sq/m – D1 & D2) (50.95sq/m – D3 & D4) site area of each lot to be provided as landscaped area	Dwelling 1 = 72sq/m Dwelling 2 = 110sq/m Dwelling 3 = 57sq/m Dwelling 4 = 89sq/m	Yes
	C8 - Front setback landscaped and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area	Landscaping maximised in front setback of site, tree planting proposed. Driveways provided with grass concrete paver blocks to minimise hard surfaces.	Yes
	C9 – 1 x 45L tree in front setback of each lot	4 x Tuckeroo 100L pot size in front setback of each proposed lot	Yes
4A.3.1 – Materials & Finishes	Materials, colours, details, finishes must be sympathetic to locality. New development to incorporate colour schemes that are consistent with the predominant colour schemes in the street.	Appropriate colours, finishes and materials with colour schemes sensitive to existing streetscape.	Yes
4A.3.2– Roof Form	A variety of roof forms will be considered, provided that they relate appropriately to the architectural style of the proposed house and respect the scale and character of adjoining dwellings.	Appropriate pitched roof form consistent with character of residential area	Yes
4A.3.3. – Front / Side / Rear Fencing	Fences that are higher than 1 metre are not encouraged along residential frontages. Different materials and textures are required to break up the appearance of long fences or walls.	1.2m high front fencing. Combination of face brick and traditional timber picket fence	No – condition fixing fencing to 1m in overall height.
4A.3.5 – Voids	C2 - Voids shall only be supported where increase amenity to primary living areas or circulation areas, and not unreasonably impact upon the amenity of adjoining properties.	Voids limited to internal stairwells and above entry foyers.	Yes
	C3 - Voids are to connect related uses and spaces, and should not compromise the useability of spaces.	Voids as proposed do not compromise the usability of spaces	Yes

4A.4.1 – Visual Privacy	C2 - Visual privacy for adjoining properties must be retained.	Visual privacy to neighbouring properties is not compromised. Windows are appropriately located and rear bedroom balconies at first floor level 2.7m length x 1.3m depth are provided with privacy screens and setback 10.9m - 16.5m from rear boundary	Yes
4A.4.3 – Solar Access	C1 - maintain 2 hours of solar access between 9am - 3pm on 21 June to habitable rooms & POS areas on site and to adjoining neighbours	Refer to discussion below	Partial
4A.4.4 – Private Open Space	C1 - Each dwelling to comprise; (i) POS min area 36m ² ; (ii) At ground level with direct access to living areas (iii) Maximises solar access; (iv) Is visible from a living room door or window (v) Minimises overlooking from adjacent properties; (vi) Is generally level; (vii) Is oriented appropriately (viii) Is landscaped; (ix) Is located / screened to ensure privacy.	All dwellings comprise rear, private open space areas of suitable area and dimension, adjoining primary living areas. D1 = 78.7sq/m D2 = 79.1sq/m D3 = 51.1sq/m D4 = 65.8sq/m Private open space areas are east facing and receive sufficient sunlight in midwinter between 10am – 1pm predominantly, are level and appropriately landscaped and screened.	Yes
4A.4.5 – Safety & Security	Maximise passive surveillance of the street	Appropriate window openings and opportunities provided	Yes
4A.4.8 – Car Parking	C1 - Must comply with Part 3A Car Parking C10 – Garages & driveways not to dominate the street.	Appropriate car parking provided on site. Landscaping provided in front setback	Yes Yes

Non Compliance

4A4.3 – Solar Access

Part 4A.4.3 of Botany Bay DCP 2013 states that buildings are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in living areas and to 50% of the primary private open space areas of both the subject site and adjoining properties. An analysis of the proposal has been undertaken below;

Proposed Lots

Shadow diagrams submitted, indicate that the rear (east facing) habitable primary living areas of the proposed dwellings and a minimum of 50% of their rear private open spaces, receive a minimum of 2 hours of solar access in midwinter from 9am – 12pm. Levels of solar access achieved to these dwellings are satisfactory.

7 Queen Street, Botany

As existing the neighbouring two storey dwelling at 7 Queen Street, directly to the south of the subject site, benefits from a minimum of 2 hours solar access in midwinter to its four ground floor northern windows which are understood to be windows to a bedroom, bathroom, kitchen / living area, rear eastern private open space area and rear façade of the dwelling.

This house is positioned approximately 0.9m -1.3m from the common boundary with the subject site.

The subject dwelling also comprises a large area of glazing at ground level facing east to the rear yard and two large windows facing west towards Queen Street.



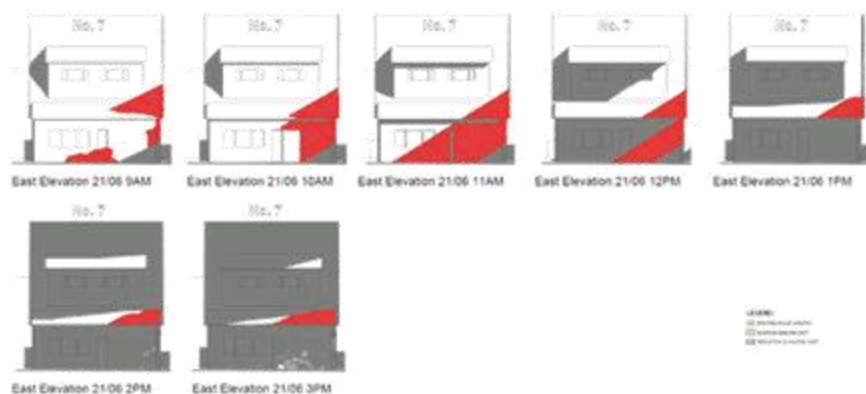
Rear of 7 Queen Street facing east



West facing façade of dwelling

Shadow diagrams and elevations submitted with the proposed development, indicate that the neighbouring dwelling will retain 2 hours of solar access in midwinter to a minimum of 50% of its overall rear private open space, however the proposal would reduce solar access to north facing windows at ground level entirely.

Notwithstanding, solar access to the habitable window openings upon the east facing rear façade of 7 Queen Street would retain 2 hours of direct solar access in midwinter as illustrated below.



It is reiterated that the subject site is oriented east-west, with the adjoining property positioned directly to the south of the proposed development. As such the site is constrained, as a direct consequence of lot orientation.

It is noted that the proposed development complies with the setback and height requirements and is not inappropriately sited upon the property. Notwithstanding the technical non-compliance, the proposal is supported on the basis of the following;

- a) The non-compliance with the FSR standard is not necessarily a contributing factor to the overshadowing arising to this southerly neighbour.
- b) A minimum of 50% of the east facing rear yard of this neighbouring site achieves reasonable solar access in midwinter from 9am – 12pm.
- c) A minimum of 2 hours of solar access in midwinter is achieved to habitable windows upon the rear eastern façade of 7 Queen Street between 9am – 11am as illustrated above.
- d) Despite of the rear eastern façade of 7 Queen Street being overshadowed following 11am in midwinter, indirect solar access remains given a substantial portion of the rear POS area receives direct sun.
- e) Larger format redevelopment is anticipated by the current planning controls which facilitate the construction of a single detached dwelling house, to a maximum FSR of 0.75:1 and reduced rear setback of up to 4m.

The proposal represents a smaller overall building mass, length and bulk on the subject site, of which a larger single detached dwelling if proposed, could otherwise generate further substantial overshadowing to this southern neighbour.

- f) The proposal incorporates appropriate southern side boundary setbacks to this neighbour, being 0.9m at ground level and 2.2m – 3m at first floor.
- g) An increase in building setbacks to this southern boundary, beyond those proposed, would not necessarily alleviate overshadowing impacts to 7 Queen Street, given the existing subdivision pattern of the eastern side of Queen Street.

Further to the above, consideration has been given to the Land and Environment Court planning principle on the impact on solar access of neighbours (*Parsonage v Ku-ring-gai* (2004) NSWLEC 347) and as amended by *The Benevolent Society v Waverly Council* below:

The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed). At higher densities sunlight is harder to protect and the claim to retain it is not as strong.

Comment: The subdivision pattern along the eastern side return of Queen Street is orientated east-west. The proposed development is within a low density residential area and whilst it does not comply with the subdivision controls of DCP 2011, the arguments presented above are considered to demonstrate how the proposal ensures that reasonable levels of solar access to this southern neighbour remain.

The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.

Comment: Levels of existing and proposed solar access to 7 Queen Street have been taken into account and are assessed above.

Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.

Comment: The proposal as submitted is considered to be design appropriate for the site and generally satisfies the relevant legislative requirements as previously discussed within this report.

The revised scheme for 4 dwellings on the site is considerably more design appropriate than the previous 5 dwelling scheme and the proposal in its current form, given the constraints of the site, is not considered to adversely impact upon the amenity of this neighbour to the extent that it would warrant refusal of the application.

For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest proportions of the glazed area.

Comment: Consideration has been given to the size and extent of glazed areas of the adjoining dwelling which will receive direct sunlight in midwinter. Whilst the levels of direct sunlight to the northern windows will be reduced, the dwelling comprises east and west facing windows which will benefit from direct and indirect solar access and outlook in midwinter.

Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.

Comment: Overshadowing by fences, roof overhangs and changes in level have been taken into consideration.

In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as existing development.

Comment: The area is low density residential, consisting of predominately one and two storey dwellings. As noted above, it is reiterated that a single detached dwelling house of greater overall mass, bulk and scale can be anticipated by the current planning controls i.e. 0.75:1 and reduced setbacks, thus the proposal in its current form is deemed appropriate.

Part 3J – Aircraft Noise and OLS

The subject site is located within the 20-25 ANEF contours and as the proposal will result in an increase in the number of dwellings and people affected by aircraft noise consideration of the provisions of this part is required.

The application was accompanied by an Acoustic Report prepared by Koikas Acoustics dated Monday, 15 July 2019.

The report confirms that the design of external facades and the construction materials used must provide sufficient noise reduction to achieve compliance with the design standard. The

report provides recommended construction materials, in order to achieve appropriate acoustic amelioration of proposed dwellings.

The proposal has been conditioned appropriately to ensure dwellings are appropriately insulated from aircraft noise. The proposal is satisfactory in this regard.

Part 3L – Landscaping and Tree Management

As per the requirements of this part, proposed lots are required to be provided with a minimum of 15% (of the site area) as deep soil planting. Plans illustrate as follows and the proposal complies with the requirements of this part.

<i>Dwelling / Proposed Lot</i>	<i>Required</i>	<i>Proposed</i>	<i>Complies</i>
Dwelling 1 – Lot 4	41.7sq/m	72sq/m (25.8%)	Yes
Dwelling 2 – Lot 3	41.7sq/m	110sq/m (39.5%)	Yes
Dwelling 3 – Lot 2	37.9sq/m	57sq/m (22%)	Yes
Dwelling 4 – Lot 1	37.9sq/m	89sq/m (35.1%)	Yes

Part 3N – Waste Minimisation and Management

A Waste Management Plan prepared by Botany Terraces Pty Ltd was submitted with the application listing methods for minimising and managing construction and ongoing waste on site.

7O – Swimming Pools

Control	Proposed	Complies
7O.2 General Requirements		
C1 Development must comply with the maximum site coverage requirements of the relevant Parts of the DCP.	Proposed lots comply with site coverage requirements as discussed previously within this report. Refer to 4A.2.7 – Site Coverage	Yes
C4 A Geotechnical report is required where the site is located in a groundwater exclusion zone.	Geotechnical Report provided	Yes
C7 Swimming pools and spa pools are to be located at the rear of properties and not within the front setback.	Pool located in rear of site.	Yes
C8 The following minimum setbacks are required for swimming pools and spas : (i) 1m from side boundaries; (ii) In cases where a proposed pool adjoins a habitable room of a neighbouring dwelling, a setback greater than 1.5 metres may be required by Council in order to protect the amenity of residents; and (iii) Setbacks are required to accommodate existing trees including their root systems, as well as trees on adjoining properties.	Proposal complies with relevant setbacks	Yes

C13 Direct sightlines into neighbouring residential properties must be reduced.	Direct sightlines into the neighbouring residential property are not possible.	Yes
C14 All swimming pool safety fences and requirements for spas must comply with the relevant Acts, Regulations and Australian Standards.	Fencing complies and will be conditioned	Yes
C15 Swimming pools are to be orientated to the northern aspect of the site to maintain a sufficient level of solar access or incorporate energy efficient heating systems if the swimming pool is to be heated	Proposed swimming pools receive an adequate amount of solar access.	Yes
C21 A rainwater tank must be installed to ensure that the pool / spa can be filled up without the need to rely on potable water supplies.	2000L Rainwater tank proposed.	Yes

Part 8 – Botany Character Precinct

The site is located within the R2 – Low Density Residential zone of Botany. Proposed dwellings have been designed to address the street and are deemed to be consistent with the future desired streetscape character anticipated by the relevant planning controls.

Proposed dwellings are satisfactory with respect of bulk, scale, design, setbacks and streetscape response as previously discussed in this report.

Proposed dwellings are designed with consideration of existing building forms, with particular consideration given to height, massing, building length, setbacks, roof form and pitch, colours, finishes and materials.

Whilst the proposed subdivision differs from that as existing, the matter of subdivision has been previously addressed within this report and it is reiterated that the proposed subdivision is deemed satisfactory.

Given the above, the proposal is considered suitable for the site and its design is consistent with the character of the Botany Precinct pursuant to Botany Bay Development Control Plan Part 8 Character Precincts.

S.4.15(1)(a)(iv) - Provisions of Regulations

The proposed development is consistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

S.4.15(1)(b) - Likely Impacts of Development

Construction

Construction of the proposed development includes excavation and the construction of the development. Impacts can be minimized through the use of standard conditions of consent relating to hours of construction, noise, dust suppression traffic management and the like.

S.4.15(1)(c) - Suitability of the Site

The subject site is of appropriate zoning, overall area, dimensions, topography and location so as to facilitate the proposed redevelopment of the site as sought by the applicant.

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties.

There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

S.4.15(1)(d) - Public Submissions

In accordance with Part 2 of the Botany Bay Development Control Plan 2013 – Notification and Advertising the development application was notified to surrounding property owners for a 14 day period from 1-15 July 2019.

One (1) submission was received, the issues raised are discussed below;

FSR Exceedance / 4 bedrooms proposed is inconsistent with existing dwellings

Comment: Matters of streetscape and FSR have been discussed previously within this report.

Amenity impacts to surrounding dwellings by way of noise & possible anti-social behaviour - i.e. parties, loud music. With two townhouses proposed to have pools, it will naturally draw the occupants & visitors to the rear garden areas to use for all hours of the day & night.

Comment: Given the residential nature of the proposal, it is unlikely that the proposed development would generate excessive adverse acoustic impacts that could otherwise not be anticipated within a residential area.

Reduction in landscaping on site / Front yard areas are covered by driveways

Comment: Plans illustrate the provision of landscaping within the front yards of the proposed development, in addition to a single width driveway spanning each proposed lot, in order to accommodate a hard stand car space behind the building line.

Landscaping as proposed on site generally complies with the relevant requirements as previously referred to in this report.

Parking / Car parking impacts on overcrowded street / No consideration for trailers or caravans

Comment: The proposal complies with the parking requirements of BBDCP 2013. Parking on Queen Street is not at capacity and is available for residents and visitors to the area.

Dangerous/Toxic Materials - the Site Management Plan makes no reference to the existence of asbestos, lead paint or cement dust. Both existing dwellings contain all of the above materials / impact to neighbouring properties i.e. dust.

Comment: The proposal has been conditioned accordingly to ensure such materials are removed and disposed of from the site in accordance with relevant legislative requirements, including but not limited to Work Health and Safety Act 2011, Work Health and Safety Regulation

2011, Code of Practice for the Safe Removal of Asbestos, and without adverse impact to neighbouring properties with regards to dust and fibres.

S.4.15(1)(e) - Public Interest

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the application, the proposal will allow the development of the site in accordance with its environmental capacity.

The proposed development results in a development which is generally consistent with the applicable planning controls and indicative of the future desired character of the locality.

Furthermore, the proposal does not create unreasonable impacts on surrounding properties. As such it is considered that the application is in the public interest.

Section 7.11 Contributions

The proposed development results in an increase in density on site of 2 additional dwellings. Credit is given for existing dwellings and s7.11 contributions are to be levied for the increase in density, a total Section 7.11 Contribution of \$40,000.00 is payable. The proposal has been conditioned accordingly.

Conclusion

The proposal has been assessed in accordance with the relevant legislative requirements, as outlined within this report.

Whilst a non compliance with respect of FSR is evident, this has been detailed previously within this report and is supported on the basis of discussions previously presented.

Matters of non compliance with respect of DCP requirements have also been detailed above and are not deemed to be of such significance, as to result in adverse amenity or streetscape concerns or have the potential to result in a precedent, such that would warrant refusal of the application.

Given the above, the proposal in its current form is deemed worthy of Approval, subject to the conditions attached to this report.

Premises: 3-5 Queen Street, Botany

S82-2019/6

SCHEDULE OF CONSENT CONDITIONS**GENERAL CONDITIONS**

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development is to be carried in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent.

Drawing No.	Author	Received
Site Analysis & Roof Plan Dwg 01 Rev 6 dated 13/08/2019	Derek Raithby Architecture	13/08/2019
Stage 1 Ground Floor Plan Dwg 03 Rev 6 dated 13/08/2019	Derek Raithby Architecture	13/08/2019
Stage 2 Ground Floor Plan Dwg 05 Rev 6 dated 13/08/2019	Derek Raithby Architecture	13/08/2019
Stage 1 First Floor Plan Dwg 04 Rev 1 dated June 2019	Derek Raithby Architecture	13/08/2019
Stage 2 First Floor Plan Dwg 06 Rev 1 dated June 2019	Derek Raithby Architecture	13/08/2019
Landscape Diagram Dwg 10 Rev 6 dated 13/08/2019	Derek Raithby Architecture	13/08/2019
Elevations of House 2 & 3 Dwg 29 Rev 4 dated 30/07/2019	Derek Raithby Architecture	02/0/2019
Elevations North / South / East / West Dwg 07 Rev 1 dated June 2019	Derek Raithby Architecture	21/06/2019
Finishes Schedule Dwg 17 Rev 1 dated June 2019	Derek Raithby Architecture	21/06/2019
Streetscape Elevation Dwg 16 Rev 1 dated June 2019	Derek Raithby Architecture	21/06/2019
Window and Door Schedule Dwg 21 Rev 1 dated June 2019	Derek Raithby Architecture	21/06/2019
Subdivision Plan Dwg 02 Rev 1 dated June 2019	Derek Raithby Architecture	21/06/2019

Reference Documents	Author	Received
Statement of Environmental Effects & Clause 4.6	ABC Planning dated June 2019	21/06/2019
Geotechnical Report	AW Geotechnics dated 6 September Rev A	21/06/2019
Site Waste Management Plan Dwg 11 Rev 1 dated June 2019	Derek Raithby Architecture	21/06/2019

4. This Consent relates to land in Lot B DP 150047, Lot C DP 150047 and as such, building works must not encroach on to adjoining lands or other public places, except as otherwise permitted by this consent.

5. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
6. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
7. This approval is not to be construed as permission to erect any structure on or near boundary contrary to the provisions of the Dividing Fences Act.
8. Balconies shall not be enclosed at any future time without prior development consent.
9. The materials and façade details approved under condition 2 and any other relevant condition of this consent shall not be altered or amended at the construction certificate stage without a prior S4.55 application and approval under the EP&A Act.
10. Mail boxes must be installed along the street frontage of the property boundary in accordance with Australia Post Guidelines. Prominent house numbers are to be displayed, with a minimum number size of 150 mm in height for each number and letter in the alphabet.
11. The development must be implemented and all BASIX commitments thereafter maintained in accordance with BASIX Certificate Number 957459M_05 dated 21 May 2019 other than superseded by any further amended consent and BASIX certificate.

Note: Clause 145(1)(a1) of the Environmental Planning & Assessment Regulation 2000 provides: A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters: -

- (al) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires.

Note: Clause 1548(2) of the Environmental Planning & Assessment Regulation 2000 provides: "A certifying authority must not issue a final occupation certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Note: For further information please see <http://www.basix.nsw.gov.au>.

12. This consent given does not imply that works can commence until such time that: -
 - a) Detailed plans and specifications of the building have been endorsed with a Construction Certificate by: -
 - i) The consent authority; or,
 - ii) An accredited certifier; and,
 - b) The person having the benefit of the development consent: -
 - i) Has appointed a principal certifying authority; and,
 - ii) Has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and,
 - iii) The person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence the erection of the building.

DEVELOPMENT SPECIFIC / ONGOING CONDITIONS

13. The stormwater drainage system (including all pits, pipes, absorption, detention structures, treatment devices, infiltration systems and rainwater tanks) shall be regularly cleaned, maintained and repaired to ensure the efficient operation of the system from time to time and at all times. The system shall be inspected after every rainfall event to remove any blockage, silt, debris, sludge and the like in the system. All solid and liquid waste that is collected during maintenance shall be disposed of in a manner that complies with the appropriate Environmental Guidelines. The water from the rainwater tank should not be used for drinking, the rainwater tank shall be routinely desludged and all contents from the desludging process disposed. Solids shall be disposed to the waste disposal and desludged liquid shall be disposed to the sewer.
14. The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) or the like, shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy - 2000.
15. Residential air conditioners shall not cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997 or contravene provisions of the Protection of the Environment (Noise Control) Regulation 2008 where emitted noise from a residential air conditioner can be heard within a habitable room in any other residential premises at night.
16. The visible light reflectivity from building materials used on the façade of the building shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
17. All proposed lights shall comply with the Australian Standard AS4282 – 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
18. Where natural ventilation fails to comply with the provisions of the Building Code of Australia, mechanical ventilation shall be provided in accordance with Australian Standard, 1668, Part 2.
19. Each building is approved as a single dwelling on each site for use and occupation by a single family. It shall not be used for separate residential occupation or as separate residential flats. No plumbing fixtures, fittings, walls shall be deleted or added, doorways enclosed or any other changes made from the approved plans in Condition No. 1 of this consent without the prior Consent of the Council.

PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

The following conditions must be completed prior to the issue of the Construction Certificate.

20. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 131 441.
21. Prior to the issue of any Construction Certificate, the following fees shall be paid:

Footpath Crossing Deposit	\$7,949.00
Development Control	\$3,174.00
Footpath Inspection Fee	\$160.00
Section 7.11 Contributions (refer below)	\$40,000.00
Street Tree Maintenance Bond	\$3,000.00

22. A Section 7.11 contribution of \$40,000.00 shall be paid to Council. The contribution is calculated according to the provisions contained within Council's adopted Former City of Botany Bay s7.11 Development Contributions Plan 2016 (Amendment 1) and having regard to the Ministerial Directive of 21 August 2012 (the \$20,000 cap). The amount to be paid is to be adjusted at the time of payment, in accordance with the review process contained Contributions Plan. The contribution is to be paid prior to the issue of the first Construction Certificate. The contributions are only used towards the provision or improvement of the amenities and services identified below.

Community Facilities	\$3,274.32
Recreation and Open Space	\$33,781.67
Transport Facilities	\$2,652.76
Administration	\$291.25

Note: The Section 7.11 Contribution fees are subject to annual review and the current rates are applicable for the financial year in which your consent is granted. If you pay the contribution in a later financial year you will be required to pay the fee applicable at the time.

23. The applicant is to submit payment of a Street Tree Maintenance Bond of \$3,000.00. The duration of the Bond shall be limited to a period of 12 months after the issue of the Final Occupation Certificate, and a satisfactory inspection from Council. At the completion of the Bond period the Bond shall be refunded pending an inspection of the trees by Council. If a tree is found to be dead, pruned or dying and will not recover Council will forfeit all or part of the bond to replace or maintain the trees, unless the Applicant undertakes this work under instruction from Council.
24. Prior to the issue of any Construction Certificate, the applicant shall lodge a Footpath Crossing Deposit of \$7,949.00 (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refunded subject to inspection by Council 12 months after the completion of all works relating to the proposed development and Final Occupational Certificate has been issued.
25. Landscaping
- (a) Prior Construction Certificate any Infiltration trench and OSD tanks shall not encroach with root zone of proposed canopy trees, allow deep soil planting in front setback to support growth of one (1) canopy tree in front yard of each proposed dwelling, as indicated in approved landscape plans.
 - (b) Public Domain Frontage Works application shall be submitted separately to Council, with Civil and Landscape works plans prior issue of a Construction Certificate. All public domain landscape works shall be carried out at the applicant's expense as per Council specifications.
 - (c) Revised Landscape Plans consistent with this consent and relevant conditions Shall be submitted to and approved by the PCA prior to the issue of any Construction Certificate.

26. Swimming Pool

To ensure suitable materials and construction methods are used for in-ground pools to address subsurface pressures from soil and groundwater, and to ensure pools do not leak, all in-ground swimming pools in areas of shallow groundwater must be of rigid construction and meet the following where applicable:

- a) AS2783 - 1992 - Use of reinforced concrete for small swimming pools, and
- b) AS/NZS 1838 - 1994 - Swimming pools – pre-moulded fibre-reinforced plastics - Design and fabrication, and
- c) AS/NZS 1939 - 1994 - Swimming pools – pre-moulded fibre-reinforced plastics - Installation.

Prior to the issue of the Construction Certificate, detailed drawings and documentation to address (a) to (c) above, where applicable, shall be provided to the Principal Certifier for approval.

27. Prior to the issue of any Construction Certificate, detailed drainage design plans for the management of stormwater are to be submitted to the Principal Accredited Certifier for assessment and approval. Design certification and drainage design calculations are to be submitted with the plans. Botany Bay DCP Part 10— Stormwater Management Technical guidelines sets out the minimum documentation requirements for detailed design plans. Stormwater management requirements for the site, including the final discharge/end connection point, must comply with Botany Bay DCP Part 10 — Stormwater Management Technical Guidelines. All drawings shall correspond with the approved architectural plans.

The plans shall incorporate the following measures:

- a. The provisions made in the Stormwater Concept Plans by TAA Consulting Engineers, drawing numbers H987 – S1/4 to S4/4, rev C, dated 06.06.19.
- b. The absorption tanks shall be revised to be setback a minimum 2.0 meters from the existing property boundaries.
- c. Rainwater tank systems shall be provided with a minimum capacity of 2000L for each proposed lot. The rainwater tanks shall service the toilets, clothes washers and any external taps in accordance with the requirements of Sydney Water and AS/NZS 3500 – National Plumbing and Drainage Code. First flush device shall also be incorporated into the tank systems. Overflow from the rainwater tank shall connect to the proposed site drainage system.

28. Prior to the issue of any Construction Certificate, any part of the proposed building within 3m of the proposed absorption systems shall be constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the tank or trench base. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.

29. Prior to the issue of any Construction Certificate, the driveways over the absorption systems shall be either constructed on a pier and beam foundation with piers extending no less than 300mm below the bottom of the trench base or constructed as

a structural slab. This requirement shall be reflected on the Construction Certificate plans and supporting documentation.

30. Prior to the issue of any Construction Certificate, all driveways/access ramps/vehicular crossings shall be designed to conform to the current Australian Standards AS 2890.1 and Council's Infrastructure Specifications. These include but are not limited to E-01, E-04, E-07 and E-16.
31. As part of this development, three (3) new concrete driveways shall be constructed. Two new three (3) metre wide driveway laybacks and one new combined five and a half (5.5) metre wide driveway layback shall be constructed as part of the new driveways. A minimum of one (1.0) metre of kerb and gutter either side of the driveway layback shall be replaced to enable the correct tie-in with the existing kerb and gutter. All redundant vehicular crossings shall be removed and replaced to fit the main footpath cross-section.
32. An application for Driveway Works (Public Domain Construction – Vehicle Entrance/Driveway Application) / Frontage Works (Public Domain Frontage Works Construction Application) shall be made to Council's Customer Service Centre prior to issue of the Construction Certificate. All boundary frontage works, egress paths, driveways and fences shall comply with the approval. A fee is payable to Council. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
33. Prior to the issue of any Construction Certificate, the applicant shall contact "Dial Before You Dig" to obtain a utility service diagram for, and adjacent to the property. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Principal Certifying Authority. All utilities within the work zone shall be protected during construction. Any adjustments or damage to public utilities/services as a consequence of the development and associated construction works shall be restored or repaired at the applicant's expense.
34. Prior to the issue of the Construction Certificate, the approved plans must be submitted to Sydney Water Tap inTM online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. Sydney Water's Tap inTM online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>
35. Prior to the issue of a Construction Certificate for the development, an application for Property Address Allocation and associated fee is required to be submitted to Council. All new addresses will be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing Standard and Section 5.2 of the NSW Address Policy. The form is available for download at:

<https://www.bayside.nsw.gov.au/services/developmentconstruction/buildingoralteringproperty/commonlyusedforms>

Derivation and production of address data components are governed by the NSW Addressing User Manual to ensure consistency of application.

http://www.gnb.nsw.gov.au/data/assets/pdf_file/0007/199411/NSW_AUM_July2018_Final.pdf

36. Plans submitted with the Construction Certificate shall demonstrate compliance with the following prior to the issue of the Construction Certificate:
- a) Landscape Plans shall be revised to delete cabanas within the rear of all proposed lots. This area shall remain turfed and/or landscaped.
 - b) All vertical plumbing, other than roof water heads and down pipes, shall be concealed within the brickwork of the building.
 - c) All hot water and air conditioning systems/units located on the balcony of a dwelling shall be encased in a recessed box on the balcony with the lid/cover of the box designed to blend in with the building. All associated pipe work is to be concealed and utilities shall comply with relevant Australian Standards.
 - d) Front boundary fencing shall have a maximum overall height of 1m. Details shall be indicated upon construction certificate plans.
 - e) Acoustic Attenuation - The measures required in the acoustical assessment report prepared by Koikas Acoustics dated Monday, 15 July 2019 shall be included in the construction drawings and in accordance with the provisions of AS 2021 – 2015: Acoustics - Aircraft Noise Intrusion - Building Siting and Construction.
 - f) The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate the Certifying Authority and Principal Certifying Authority must:
 - i) Be satisfied that suitable evidence is provided to demonstrate that the products and systems (including installation) proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the relevant requirements of the NCC; and
 - ii) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.
37. The applicant shall confer with Ausgrid to determine if:
- installation of electricity conduits in the footway is required.
 - satisfactory clearances to any existing overhead High Voltage mains will be affected.
 - an electricity distribution substation is required.
- Written confirmation of Ausgrid's requirements shall be obtained prior to issue Construction Certificate.
38. A Waste Management Plan prepared in accordance with Part 3N of Council's DCP 2013 shall be prepared and submitted to the satisfaction of the PCA, prior to the release of the Construction Certificate. The Waste Management Plan shall include the size and storage of bins, the collection point for the waste contractor recycling contractor, maintenance of the bins and the provision of recycling and composting facilities.
39. Details on the mechanical plant and equipment to be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate. The report must:

- a) identify each item of plant and equipment;
- b) the following additional criteria adopted by Council:
 - i) The operation of all plant and equipment shall not give rise to an equivalent continuous (L_{Aeq}) sound pressure level at any point on any residential property greater than 5dB(A) above the existing background L_{A90} level (in the absence of the noise under consideration).
 - ii) The operation of all plant and equipment when assessed on any residential property shall not give rise to a sound pressure level that exceeds L_{Aeq} 50dB(A) day time and L_{Aeq} 40 dB(A) night time.
 - iii) The operation of all plant and equipment when assessed on any neighbouring commercial/industrial premises shall not give rise to a sound pressure level that exceeds L_{Aeq} 65dB(A) day time/night time.
 - iv) For assessment purposes, the above L_{Aeq} sound levels shall be assessed over a period of 10-15 minutes and adjusted in accordance with EPA guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content where necessary.

Note "sensitive" positions should be selected to reflect the typical use of a property (i.e. any outdoor areas for day and evening but closer to the façade at night time), unless other positions can be shown to be more relevant.

40. A Soil and Water Management Plan shall be prepared. The Plan must include details of the proposed erosion and sediment controls to be installed on the building site. A copy of the Soil and Water Management Plan must be kept on-site at all times and made available on request.

Soil and sedimentation controls are to be put in place prior to commencement of any work on site. The controls are to be maintained in effective working order during construction. These devices shall be maintained in a serviceable condition at all times through the demolition; excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.

41. A Construction Management Plan shall be submitted to, and approved by the Private Certifying Authority prior to the commencement of works. The Plan shall address, but not be limited to the following matters:
- a) Proposed protection for Council and adjoining properties,
 - b) Proposed phases and order of construction works, expected method and duration of each construction phase,
 - c) Hours of work,
 - d) Contact details of site manager,
 - e) Proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process,
 - f) Traffic management, method of access, routes through Council area.
 - g) Proposed method of loading / unloading, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site.
 - h) Noise and vibration management,
 - i) Waste management,

- j) Erosion and sediment control,
- k) Protection of trees to be retained.

A copy of the approved Construction Management Plan shall be submitted to Council.

42. A Traffic and Pedestrian Management Plan prepared by an RMS accredited consultant, shall be submitted to and approved by the Private Certifying Authority. The Plan shall nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police, and address, but not be limited to, the following matters:
- a. Ingress and egress of construction vehicles to the site,
 - b. routing and control of construction vehicles,
 - c. parking of employees vehicles,
 - d. loading and unloading, including construction zones, for all construction vehicles,
 - e. predicted traffic volumes, types and routes,
 - f. pedestrian and traffic management methods,
 - g. the hours of operation of the construction site,
 - h. holding areas for demolition/excavation/construction delivery vehicles wanting to access the site'
 - i. means of ensuring vehicular and pedestrian access to adjoining resident's properties and existing residents and visitors for the duration of the works.

The plan may need to be prepared in consultation with Council's Traffic Management section. A copy of the approved Plan shall be submitted to Council.

Note: Any temporary road closure shall be confined to weekends and off-peak hour times and is subject to Council's Traffic Engineer's approval. Prior to implementation of any road closure during construction, Council shall be advised of these changes and Traffic Control Plans shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.

43. To ensure suitable materials and construction methods are used for in-ground pools to address subsurface pressures from soil and groundwater, and to ensure pools do not leak, all in-ground swimming pools in areas of shallow groundwater must be of rigid construction and meet the following where applicable:
- a) AS2783 – 1992 – Use of reinforced concrete for small swimming pools;
 - b) AS/NZS 1838 – 1994 – Swimming pools – premoulded fibre-reinforced plastics – Design and fabrication;
 - c) AS/NZS 1939 – 1994 – Swimming pools – premoulded fibre-reinforced plastics – Installation.

Prior to the issue of the construction certificate detailed drawings and documentation to address a) – c), where applicable, shall be provided to the Principle Certifying Authority for approval.

PRIOR TO THE COMMENCEMENT OF WORKS

The following conditions must be completed prior to the commencement of works.

44. Tree Preservation

Prior to any works commencing on site the following shall be adhered to;

- (a) A *Cupanopsis anacardioides* (Tuckeroo) and an *Agonis flexuosa* (Western Australian Willow Myrtle) is located in the Public Domain and shall be protected with a **Tree Protection Zone (TPZ)**.

In order to ensure that the he above mentioned tree is protected during demolition and construction, and the health and structural stability of the tree is ensured a **Tree Protection Zone** shall be established as follows;

- (i) In accordance with *AS4970-2009* protective fences consisting of chain wire mesh temporary fence panels with a height 1.8m shall be erected outside the drip line. The fence panels must be securely mounted and braced to prevent movement. The area within the fenced area is to be mulched with leaf mulch to a depth of 100mm and a weekly deep watering program undertaken.
 - (ii) The protective fence shall consist of para-webbing or chain wire mesh mounted on star pickets or similar metal posts, shall be placed prior to the commencement of any work on site and shall remain until the completion of all building and hard landscape construction.
 - (iii) Fencing shall be erected to ensure that the public footway is unobstructed. If there is insufficient space to erect fencing, then the trees are to be physically protected by wrapping the trunk with hessian or carpet underlay to a height of 2.5 meters or to the tree's first lateral branch, whichever is greater, and affix timber palings around the tree with strapping or wire (not nails).
45. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- i) stating that unauthorised entry to the work site is prohibited, and
 - ii) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
 - iii) the Development Approval number;
 - iv) the name of the Principal Certifying Authority including an after hours contact telephone number; and
 - v) Any such sign is to be removed when the work has been completed.
46. Where demolition is proposed, the following shall be provided to Council at least forty-eight (48) hours prior to the commencement of demolition:
- a) Written notice, indicating the date when demolition of the building is to commence.
 - b) This persons full name and address.
 - c) Details of Public Liability Insurance.
47. Prior to the commencement of works, a plan (written and/or diagrammatic) shall be submitted and approved by the Certifying Authority, showing the storage location of construction building materials and plants and the method of access to the property. No storage of construction materials and plants to be allowed in road reserve area.
48. Prior to the commencement of works,
- a) The applicant shall submit to Council a full photographic survey showing the existing conditions of Council's infrastructure. The survey shall identify any existing damages

to the road; kerb; gutter; footpath; driveways; street trees; street signs; and any other Council assets fronting the property and in the vicinity of the development. Failure to do so will result in the applicant being liable for any construction related damages to these assets. Any damage to Council's infrastructure during the course of this development shall be restored at the applicant's cost; and

- b) The application must supply Bayside Council with a copy of the dilapidation report for the adjoining properties, which documents and photographs the condition of buildings and improvements. The report is to clearly depict any existing damage to the road; kerb; gutter; footpath; driveways; water supply; sewer works; street trees; street signs or any other Council assets in the vicinity of the development. The report must be submitted to Bayside Council prior to the issue of a Construction Certificate and will be made available by Bayside Council in any private dispute between the neighbours regarding damage arising from the site and construction works.
49. If an excavation associated with the proposal extends below the level of the base of the footings of a building on an adjoining allotment of land or the common boundary fence the person causing the excavation to be made:
- a) Must preserve and protect the building/ fence from damage; and,
 - b) If necessary, underpin and support such building in an approved manner;
 - c) Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;
 - d) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piercing, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or destabilise any adjacent structures.
 - e) If the soil conditions required it:
 - i) Retaining walls associated with the erection of a building (swimming pool) or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided and
 - ii) Adequate provision must be made for drainage.
50. The PCA must be satisfied that: -
- a) In the case of work to be done by a licensee under the Home Building Act: -
 - i) Has been informed in writing of the licensee name and contractor licence number, and;
 - ii) Is satisfied that the licensee has complied with the requirements of Part 6 of the Home Building Act 1989; or,
 - b) In the case of work to be done by any other person: -

- i) Has been informed in writing of the person's name and owner-builder permit number, or;
 - ii) Has been given a declaration signed by the owner of the land that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of *owner builder work* in Section 29 the Home Building Act 1989.
 - c) And is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.
51. The applicant must inform Council, in writing, of:
- a) The name of the contractor, and licence number of the licensee who has contracted to do, or intends to do, the work: or
 - b) The name and permit number of the owner-builder who intends to do the work;
 - c) The Council also must be informed if: -
 - i) A contract is entered into for the work to be done by a different licensee; or
 - ii) Arrangements for the doing of the work are otherwise changed.
52. The site shall be secured by 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points. Such fencing or other measures must be in place before the approved activity commences.
53. Building plans must be lodged through a Sydney Water Tap In Service for approval prior to commencement of works.
54. This Consent shall not preclude the demolisher from giving notice to other statutory authorities, such as Sydney Water Corporation, WorkCover, etc.
55. Council's warning sign for soil and water management must be displayed on the most prominent point on the building site, visible to both the street and site workers. The sign shall be erected prior to commencement of works and shall be displayed throughout construction.
56. Erosion and sediment control devices shall be installed and in function prior to the commencement of any demolition, excavation or construction works upon the site in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into public stormwater drainage system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the legislative requirements and guidelines. These devices shall be maintained in a serviceable condition AT ALL TIMES throughout the entire demolition, excavation and construction phases of the development and for a minimum one (1) month period after the completion of the development, where necessary.
57. If the land to which the application relates is served by a common sewerage system that is also used by others, then measures must be placed in effect and prior to the commencement of work to ensure the operation of the sewerage system is without disruption to other joint users.

58. Prior to commencement of any works, application(s) shall be made to Council's Customer Services Counter for the following approvals and permits on Council's property/road reserve under Road Act 1993 and Local Government Act 1993 as appropriate: -

Note - Any works shown within Council's road reserve or other Council Lands on the development approval plans are indicative only and no approval for these works is given until this condition is satisfied.

- a) Permit to erect hoarding on or over a public place, including Council's property/road reserve
 - b) Permit to construction works, place and/or storage building materials on footpaths, nature strips
 - c) Permit for roads and footways occupancy (long term/ short term)
 - d) Permit to construct vehicular crossings, footpath, kerb and gutter over road reserve
 - e) Permit to open road reserve area, including roads, footpaths, nature strip, vehicular crossing or for any purpose whatsoever
 - f) Permit to place skip/waste bin on footpath and/or nature strip
 - g) Permit to use any part of Council's road reserve or other Council lands
59. The operation shall not give rise to offensive odour or other air impurities in contravention of the *Protection of the Environment Operations Act 1997*. The Principle contractor shall ensure that all practical means are applied to minimise dust and odour from the site. This includes:
- a) Covering excavated areas and stockpiles;
 - b) The use of fine mists of hydrocarbon mitigating agents on impacted stockpiles or excavation areas;
 - c) Maintenance of equipment and plant to minimise vehicle exhaust emissions;
 - d) Erection of dust screens on the boundary of the property and/or closer to potential dust sources;
 - e) All loads entering or leaving the site are to be covered
 - f) The use of water sprays to maintain dust suppression; and
 - g) Keeping excavated surfaces moist.
60. Where construction/building works require the use of a public place including a road or footpath, approval under Section 68 of the Local Government act 1993 for a Barricade Permit is to be obtained from Council prior to commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.
61. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.
62. Consultation with Ausgrid is essential prior to commencement of work. Failure to notify Ausgrid may involve unnecessary expense in circumstances such as:
- i. where the point of connection and the meter board has been located in positions other than those selected by Ausgrid or
 - ii. where the erection of gates or fences has restricted access to metering equipment.
63. Where clearances to any existing overhead High Voltage mains are affected, the builder shall make arrangements with Ausgrid for any necessary modification to the

electrical network in question. These works shall be at the applicant's expense. Ausgrid's requirements under Section 49 Part 1 of the Electricity Supply Act 1995 shall be met prior to commencement of works or as agreed with Ausgrid.

64. Prior to the commencement of any demolition work, a licensed demolisher who is registered with WorkCover NSW must prepare a Safe Work Method Statement to the satisfaction of the nominated Certifying Authority and a copy shall be sent to Bayside Council (if Council is not the Certifier). A copy of the SWMS shall be submitted to WorkCover NSW also.

The SWMS must be in compliance with AS2601:1991 – "Demolition of Structures" with the requirements of WorkCover NSW and conditions of the Development Approval and shall include provisions for:

- a) Enclosing and making the site safe; any temporary protective structures must comply with the "Guidelines for Temporary Protective Structures (April 2011)";
- b) Induction training for on-site personnel;
- c) Inspection and removal of asbestos; contamination and other hazardous materials (by appropriately licensed contractors);
- d) Dust control – dust emission must be minimised for the full height of the building. A minimum requirement is that perimeter scaffolding; combined with chain wire and shade cloth must be used; together with continuous water spray during the demolition process. Compressed air must not be used to blow dust from the site;
- e) Disconnection of gas and electrical supply;
- f) Fire fighting services on site are to be maintained at all times during demolition work. Access to fire services within the street must not be obstructed;
- g) No demolition activity shall cause damage to or adversely affect the safe access and egress of this building;
- h) Water.

DURING DEMOLITION / EXCAVATION / CONSTRUCTION

The following conditions must be complied with during demolition, excavation and or construction.

- 65. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
- 66. Hours of construction shall be confined to between 7.00am to 5.00pm Mondays to Fridays, inclusive, and between 8.00am to 1.00pm Saturdays with no work being carried out on Sundays and all public holidays. All possible steps should be taken to silence construction site equipment.
- 67. Works shall not encroach onto or over adjoining properties, including retaining walls, fill material or other similar works. Soil shall not be lost from adjoining sites due to construction techniques employed on the subject site.
- 68. Inspections must be conducted by Council's Engineer at the following occasions:
 - a) Formwork inspection of driveway layback and adjacent kerb and gutter prior to laying of concrete,
 - b) Formwork inspection of Council's kerb and gutter prior to laying of concrete,
 - c) Formwork inspection of Council's footpath prior to laying of concrete,
 - d) Final inspection of driveway layback and adjacent kerb and gutter,

- e) Final inspection of Council's kerb and gutter,
 - f) Final inspection of Council's footpath.
69. During Demolition, Excavation and Construction, care must be taken to protect Council's infrastructure, including street signs, footpath, kerb, gutter and drainage pits etc. Protecting measures shall be maintained in a state of good and safe condition throughout the course of construction. The area fronting the site and in the vicinity of the development shall also be made safe for pedestrian and vehicular traffic at all times. Any damage to Council's infrastructure (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) shall be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
70. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system. The demolisher shall comply with the Australian Standard AS 2601-2001 "Demolition of Structures" and the requirements of the NSW WorkCover Authority.
71. All waste generated on site shall be disposed of in accordance with the approved Waste Management Plan.
72. All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by Safe Work NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.
73. Hazardous and/or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of the relevant statutory authorities (Safework NSW and the NSW Environment Protection Authority), together with the relevant regulations, including:
- i. Work Health and Safety Act 2011
 - ii. Work Health and Safety Regulation 2011
 - iii. Protection of the Environment Operations (Waste) Regulation 2005.
74. Vibration
- (a) Vibration levels induced by the demolition activities shall not exceed 1mm/sec peak particle velocity (ppv) when measured at the footing of any occupied building.
 - (b) Vibration levels induced by the demolition activities must not exceed levels listed in Standard DIN 4150-3 (1999-02), *Structural vibration Part 3 – Effects of vibration on structures Table 12-7*. The operation of plant and equipment must not give rise to the transmission of vibration nuisance or damage to other premises.
75. The upper noise level from the demolition operations measured over a period of 10 minutes must not exceed the background noise level by more than 10dB(A).
76. During demolition and construction works, the applicant/builder is required to ensure the protection and preservation of all boundary fencing or boundary walls between the subject site and adjoining properties. Any damage caused as a result of such works will be at the full cost of the applicant/builder.
77. Stockpiles are not permitted to be stored on Council property (including the nature strip) unless prior approval has been granted. In addition, stockpiles of topsoil, sand,

aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.

78. Building and demolition operations such as brick cutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
79. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
80. Precautions to be taken shall include compliance with the requirements of the Safework of New South Wales, including but not limited to:
 - a) Protection of site workers and the general public.
 - b) Erection of hoardings where appropriate.
 - c) Asbestos handling and disposal where applicable.
 - d) Any disused service connections shall be capped off.
 - e) The disposal of refuse is to be to an approved waste disposal depot.
81. Hazardous or Special Wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of Safework NSW and the Department of Environment, Climate Change and Water and with the provisions of the:
 - a) Occupational Health and Safety Act, 2000;
 - b) Occupational Health and Safety Regulation 2001;
 - c) Protection Of the Environment Operations Act 1997 (NSW); and
 - d) NSW Department of Environment and Climate Change Waste Classification Guidelines (2008).
82. Any material containing asbestos found on site during the demolition process the shall be removed and disposed of in accordance with:
 - a) WorkCover NSW requirements. An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos;
 - b) Protection of the Environment Operations Act 1997;
 - c) Protection of the Environment Operation (Waste) Regulation;
 - d) DECC Waste Classification Guidelines 2008; and
 - e) No demolition materials shall be burnt or buried on the site.

An appropriately licensed asbestos removalist must complete all asbestos works if they consist of the removal of more than 10m² of bonded asbestos and/or any friable asbestos.

83. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

Note: The Applicant may be liable to prosecution under the Environmental Planning and Assessment Act 1979 for a breach of an approval condition, or under the Protection of the Environment Operations Act 1997, if its employees, agents or sub-

contractors allow sediment, including soil, excavated material, building materials, or other materials to be pumped, drained or allowed to flow to the street, stormwater pipes or waterways. The Applicant shall ensure that its employees, agents or sub-contractors understand and maintain sediment control measures.

84. All services (Utility, Council, etc.) within the road reserve (including the footpath) shall be relocated/adjusted to match the proposed/existing levels as required by the development.

To ensure that utility authorities and Council are advised of any effects to their infrastructure by the development, the applicant shall: -

- a) Carry out a survey of all utility and Council services within the site including relevant information from utility authorities and excavation if necessary to determine the position and level of services.
- b) Negotiate with the utility authorities (eg Energy Australia, Sydney Water and Telecommunications Carriers) and Council in connection with: -
 - i. The additional load on the system; and
 - ii. The relocation and/or adjustment of the services affected by the construction.

Any costs in the relocation, adjustment, and provision of land or support of services as requested by the service authorities and Council are to be the responsibility of the developer.

85. All excavation and backfilling shall be executed safely and in accordance with appropriate professional standards; and all excavations shall be properly guarded and protected to prevent them from being dangerous to life or property;

- a) Existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, or underpinning prior to the commencement of any work. The construction shall not undermine, endanger or de-stabilise any adjacent structures.
- b) Where the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - i. Protect and support the adjoining premises from possible damage from the excavation, and
 - ii. Where necessary, underpin the adjoining premises to prevent any such damage.
 - iii. Must at least be 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of the intention to do so to the owner of the adjoining allotment of land and, furnish particulars of the excavation to the owner of the building being erected or demolished;

Any retained existing structures and or services on this and adjoining properties are not endangered during any demolition excavation or construction work associated with the above project. The applicant is to provide details of any shoring, piling, or underpinning prior to the commencement of any work. The

construction shall not undermine, endanger or de-stabilize any adjacent structures.

Where soil conditions require:

- a) Retaining walls associated with the erection of a building or other approved methods of preventing movement or other approved methods of preventing movement of the soil must be provided, and
- b) Adequate provision must be made for drainage.

86. The following shall be complied with during construction and demolition:

a) Construction Noise

Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Interim Construction Noise Guideline and the Protection of the Environment Operations Act 1997.

b) Level Restrictions

i) Construction period of 4 weeks and under:

The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20dB(A).

ii) Construction period greater than 4 weeks and not exceeding 26 weeks:

The L10 sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).

87. The applicant shall conduct all construction and related deliveries wholly on site. If any use of Council's road reserve is required then separate applications are to be made at Council's Customer Services Centres.

88. During construction work the Council nature strip shall be maintained in a clean and tidy state at all times. The nature strip shall be suitably replaced where damaged due to construction work in accordance with Council Specification at the completion of construction, and at the Applicant's expense.

89. The principal contractor or owner builder must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a. The Erosion and Sediment Control Plan;
- b. "Managing Urban Stormwater - Soils and Construction" (2004) Landcom ('The Blue Book'); and
- c. Protection of the Environment Operations Act 1997.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

90. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.

91. The noise reduction measures specified in the noise report prepared by Koikas Acoustics dated 15 July 2019, shall be validated by a Certificate of Compliance prepared by the acoustic consultant, and submitted to the Principal Certifier, prior to the issue of an Occupation Certificate. If Council is not the Principal Certifier, a copy shall be submitted to Council concurrently.

92. Prior to the issue of any Occupation Certificate(s), inspection reports (formwork and final) for the works on the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.

93. Swimming Pool

(A) The design and construction of the swimming pool and associated fencing and equipment must comply with:

- i) Swimming Pools Act 1992;
- ii) Swimming Pools Regulation 2008;
- iii) National Construction Code (formally known as the Building Code of Australia);
- iv) AS 1926.1-2012 – Swimming Pool Safety – Safety Barriers for Swimming Pools;
- v) and
- vi) Protection of the Environment Operations Act 1997.

Details demonstrating compliance with the requirements of this condition are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate and must be complied with prior to the issue of the Occupation Certificate.

(B) The swimming pool shall be designed and constructed in a manner that does not allow water to be drained to the adjoining properties, and

(C) Waste water from the pool or spa shall be discharged into the Sydney Water system, and

(D) The swimming pool fence must be located at least 1m from the pool edge.

(E) The swimming pool shall be registered in accordance with the requirements of the Swimming Pools Act 1992 prior to issue of any Occupation Certificate, and

(F) The pool / spa shall not be filled until the safety fences have been completed in accordance with this consent and inspected by the Principal Certifier, and

(G) The motor, filter, pump and sound producing equipment or fittings associated with or forming part of the pool filtering system shall be sound insulated and/or isolated so as not to create an offensive noise to neighbours.

Swimming pool is to be installed with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):

- (i) Before 8.00 am or after 8.00 pm on any Sunday or public holiday, or
- (ii) Before 7.00 am or after 8.00 pm on any other day.

94. Swimming Pool

Prior to the issue of the Occupation Certificate, the following is required:

- a) Where a dividing fence, being a dividing fence that separates the lands of adjoining owners or a public place, is to form part of the safety enclosure in which the swimming pool is to be located, then such fencing must be a minimum of 1.8m in height from the finished surface level surrounding the pool, sound and in a state of good repair and condition. The boundary fencing shall be installed prior to the completion of the swimming pool;
- b) The swimming pool shall be fenced in accordance with Section 7 of the Swimming Pools Act 1992 and Australian Standard AS1926 (2012), prior to the filling of water in the pool or use of the pool. Such fence shall be provided with a self-latching and self-closing gate, opening outwards, capable of being opened from the poolside only and with provision for permanent locking when not in use. The fence shall be installed to the satisfaction of the Principal Certifying Authority, prior to the filling of water in the pool/use of the pool;
- c) The fence required surrounding the swimming pool and in relation to any gate that forms part of such fence shall be erected in accordance with the approved plans and specifications, together with the standards set out in AS1926 entitled "Fences and Gates for Private Swimming Pools".;
- d) The pool shall be provided with at least two depth markers above the water line, being of numerical figures or at least 75mm in height, and shall be located in two locations on either side of the pool, indicating the corresponding depth of the pool;
- e) The Principal Certifying Authority shall confirm that a pool cover is installed across the entirety of the swimming pools to minimize evaporation;
- f) The provision of a suitable poster showing the details of resuscitation techniques shall be erected. This poster should also contain the advice that "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", together with details of resuscitation techniques (for adults, children and infants) set out in accordance with the relevant provisions of the document entitled "Cardio Pulmonary Resuscitation", according to the AS 1926.1 2012 and the Swimming Pool Regulation 2008;
- g) An approved resuscitation poster, outlining life-saving resuscitation procedures, shall be erected and displayed in a prominent position adjacent to the pool.

Note: The above notices shall be kept in a legible condition and at a visible location on the pool side at all times.

Note: The definition of "swimming pool" is that given under Clause 3 of the Swimming Pools Act 1992.

95. Prior to issue of any Occupation Certificate, high-level overflows from the swimming pool shall be gravity fed and connected to Sydney Water's sewer via an approved system. The connection must not directly vent the receiving sewer. Upon completion, certification from a license plumber shall be submitted to the Principal Certifying Authority certify that the connection has been made in accordance with the Sydney Water's requirements and the current plumbing codes.

96. Prior to issue of any Occupation Certificate, Principal Certifying Authority shall confirm the deck or concourse area surrounding the swimming pool have been constructed at minimum 1.0% grade towards the pool to prevent surface water overflowing into the adjoining properties.
97. Prior to issue of any Occupation Certificate, Principal Certifying Authority shall confirm that all the safety barriers enclosing the new swimming pool are installed and satisfy AS1926.1 Swimming Pool Safety – Safety Barriers for Swimming Pools.
98. Prior to issue of any Occupation Certificate, Principal Certifying Authority shall confirm that a pool cover is installed across the entirety of the swimming pool to minimize evaporation rates.
99. All applications associated with works on Council's land must be made at least 7-10 days prior to the programmed completion of works and all construction must be
100. Prior to the issue of any Occupation Certificate, the applicant shall carry out the following works:
- a) On Queen Street, adjacent to development, reconstruct existing Kerb and Gutter for the full length property in accordance with Council Infrastructure Specifications, and
 - b) On Queen Street, adjacent to development, reconstruct existing Footpath for the full length of the property in accordance with Council Infrastructure Specifications.
- All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act 1993, shall be completed to the satisfaction of Council.
101. Prior to the issue of any Occupation Certificate, Reciprocal Rights of carriageway easements shall be created for proposed lot 02 and 03 (house 2 and house 3) to provide for vehicular access.
- Council requires proof of lodgement of the signed Subdivision Certificate and 88B Instrument with the Land Titles Office.
102. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
- The overflow from the rainwater tank shall be directed to the storm water system.
 - All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
 - A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.
103. Prior to the issue of an occupation certificate, certification from a licenced plumber shall be provided certifying the installation of the required minimum capacity 2000L rainwater tank(s) in each lot in accordance with the requirements of Sydney Water and AS/NZS 3500 – National Plumbing and Drainage Code. The rainwater tanks shall be certified as servicing the toilets, clothes washers and any external taps on the site. First flush device shall be installed & overflow from the rainwater tank shall connect to the proposed site drainage system.

104. Prior to the issue of any Occupation Certificates, documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards. A works-as-executed drainage plan shall be prepared by a registered surveyor based on a survey of the completed works. A copy of the certificate and works-as-executed plan(s) shall be supplied to the Principal Certifying Authority. A copy shall be provided to Council if Council is not the Principal Certifying Authority.
105. Prior to the issue of any Occupation Certificate, a restriction on Use of Land and Positive Covenant(s) shall be imposed on the development. The following covenants shall be imposed under Section 88(E) of the Conveyancing Act 1919 and lodged with the NSW Land and Property Information:
- Positive Covenant and Restriction on Use of Land for On-Site Infiltration System. Refer to Appendix A of the Stormwater Management Technical Guidelines for suggested wording.
106. The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of an Occupation Certificate the Principal Certifying Authority must:
- a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems (including installation) proposed for use or used in the construction of external walls, including finishes and claddings such as synthetic or aluminium composite panels, comply with the relevant requirements of the NCC; and
 - b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.
107. Prior to the issue of any Occupation Certificate(s), documentation from a practising civil engineer shall be submitted to the Principal Certifying Authority certifying that the stormwater drainage system has been constructed generally in accordance with the approved stormwater management construction plan(s) and all relevant standards.
108. The owner of the premises is required to comply with the following requirements when installing a rainwater tank:
- a) The overflow from the rainwater tank shall be directed to the storm water system.
 - b) All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties.
 - c) A first flush device shall be installed to reduce the amount of dust, bird faeces, leaves and other matter entering the rainwater tank.
109. All works within the road reserve, which are subject to approval pursuant to Section 138 of the Roads Act, 1993, shall be completed and accepted by Council.
- Damage to brick kerb and/or gutter and any other damage in the road reserve shall be repaired using brick kerb and gutter of a similar type and equal dimensions. All works

shall be to Council's satisfaction at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.

Inspection reports (formwork and final) for works within the road reserve shall be obtained from Council's engineer and submitted to the Principal Certifying Authority attesting that this condition has been appropriately satisfied.

110. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.
111. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorized Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.

112. Evidence of a Sydney Water permit or consent for discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority prior to use or occupation of the premises. Where a permit or consent may not be required from Sydney Water certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.
113. A full width vehicular entry is to be constructed to service the properties. Any obsolete vehicular entries are to be removed and reconstructed with kerb and gutter. This work may be done using either a Council quote or private contractor. There are specific requirements for approval of private contractors.
114. Landscaping
 - a) An experienced Landscape Contractor shall be engaged to undertake the landscaping work and shall be provided with a copy of both the approved landscape drawing and the conditions of approval to satisfactorily construct the landscape to Council requirements.
 - b) All landscape works are to be carried out in accordance with the approved landscape plans. The landscaping is to be maintained to the approved standard at all times.
 - c) A Landscape Architect shall provide a report to the certifying authority (with a copy provided to Council, if Council is not the principal certifying authority) stating that the landscape works have been carried out in accordance with the approved plans and documentation.

115. Any damage not shown in the photographic survey submitted to Council before site works have commenced will be assumed to have been caused by the site works (unless evidence to prove otherwise). All damages as a result from site works shall be rectified at the applicant's expense to Council's satisfaction, prior to occupancy of the development and release of damage deposit.
116. Street numbers shall be clearly displayed with such numbers being of contrasting colour and adequate size and location for viewing from the footway and roadway. Details of street numbering shall be submitted to Council for approval.
117. All plumbing work proposed for the installation and reuse of rainwater shall comply with the NSW Code of Practice: Plumbing and Drainage and be installed in accordance with Sydney Water "Guidelines for rainwater tanks on residential properties."

PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE

118. For compliance with the conditions of consent, a separate application must be made for a Subdivision Certificate. The application is to be accompanied by documentary evidence demonstrating compliance with all conditions of consent. Submission of a Subdivision Certificate Application shall be made to Bayside Council and accompanied by a linen plan with six (6) copies and appropriate fees.
119. Prior to the issue of the Subdivision Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorized Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the e-developer icon or telephone 13 20 92.
 - a) Following application, a "Notice of Requirements" will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and including the building, driveway and/or landscape design.
 - b) The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the release of the linen plan or occupation of the development.
120. Prior to the issue of the Subdivision Certificate, a Certificate of Survey from a Registered Surveyor shall be submitted to the satisfaction of Bayside Council showing all structures are wholly located within the property boundary.

EXTERNAL AUTHORITIES

121. The following conditions imposed by **Ausgrid** are as follows:
 - a) The developer is required to make a formal submission to Ausgrid by means of a duly completed Preliminary Enquiry and/ or Connection Application form, to allow Ausgrid to assess any impacts on its infrastructure and determine the electrical supply requirements for the development (e.g. whether a substation is required on site).
 - b) In general, works to be considered by Ausgrid include, but are not limited to, the following:
 - i. Changes in electrical load requirements

- ii. Changes to Ausgrids infrastructure (ie. asset relocations, decommissioning substations etc.)
 - iii. Works affecting Ausgrids easements, leases and/ or right of ways
 - iv. Changing the gradients of any roads or paths
 - v. Changing the level of roads or foot paths
 - vi. Widening or narrowing of roads
 - vii. Closing roads or laneways to vehicles
 - viii. In all cases Ausgrid is to have 24 hour access to all its assets
 - c) Any work undertaken near overhead power lines needs to be done in accordance with:
 - i. Workcover Document ISSC 23 "Working Near Overhead Power Lines"
 - ii. Ausgrids Network Standard
 - iii. Ausgrids Electrical Safety Rules
 - d) The developer is to ensure that the proposed works do not contravene Ausgrids technical standards and statutory requirements, in regards to the safe and reliable operation and maintenance of Ausgrid's network.
122. The following conditions imposed by **Sydney Water** are as follows:
- a) The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.
 - b) *The Sydney Water [Tap in™](#) online self-service replaces our Quick Check Agents as of 30 November 2015.*
 - c) The [Tap in™](#) service provides 24/7 access to a range of services, including:
 - i. building plan approvals
 - ii. connection and disconnection approvals
 - iii. diagrams
 - iv. trade waste approvals
 - v. pressure information
 - vi. water meter installations
 - vii. pressure boosting and pump approvals
 - viii. changes to an existing service or asset, e.g. relocating or moving an asset.
 - d) A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water. It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design. Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

Certified by Luis Melim _____
Manager, Development Services



STATEMENT OF ENVIRONMENTAL EFFECTS

Section 8.2 Review – DA/2018/1169

3-5 Queen Street, Botany

Submitted to Bayside Council
on Behalf of Philip Tian

June 2019

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1. INTRODUCTION

ABC Planning Pty Ltd has been engaged to prepare this Section 8.2 Review of the determination for DA-2018/1169 for the demolition of the existing structures, Torrens title subdivision of the sites into 5 lots and construction of 2 x semi-detached dwellings and 3 x attached dwellings at 3-5 Queen Street, Botany. In order to address the reasons for refusal, the proposal now includes demolition, Torrens title subdivision of the 2 sites into 4 lots and construction of 2 pairs of semi-detached dwellings.

DA-2018/1169 was refused at the Bayside Local Planning Panel on 9th April 2019.

The panel advised that an amended proposal could be prepared for consideration under Section 8.2 of the Environmental Planning and Assessment Act 1979.

The following sections provide a summary of amendments and a response to each of the reasons for refusal.

It is considered that the proposed amendments result in an improved streetscape and subdivision outcome whilst preserving a high level of amenity to adjoining properties.

The proposed semi-detached dwellings and amended subdivision pattern is considered to sit comfortably in the varied character of the area and is consistent with a number of recent approvals for similar building typologies and subdivision patterns in the vicinity of the subject site – e.g. 12 Hambly Street, 22-24 Hambly Street, and 16a-16b William Street. There are also a number of older semi-detached developments in the locality.

Overall, it is considered that the amended proposal represents a high-quality and desirable outcome for the subject site which will sit comfortably in its context without compromising the amenity of neighbouring properties.

It is therefore considered that the amended proposal is suitable for approval under the provisions of Section 8.2 of the Environmental Planning and Assessment Act 1979.

2. SITE ANALYSIS

The subject site comprises of 2 lots, 3 and 5 Queen Street. No. 3 Queen Street has a site area of 556.4sqm, whilst no. 5 Queen Street has a site area of 505.9 sqm, giving a combined site area of 1,062.3 sqm. The site has a total frontage of 29m to Queen Street.

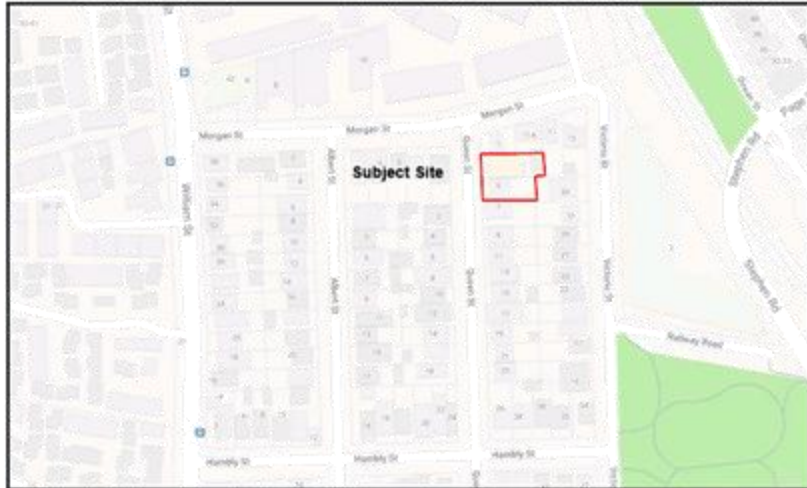


Figure 1: Site location and context



Figure 2: Aerial photo of subject site

2.1. Existing Development

Subject site



Figure 3: Existing dwellings on the subject site



Figure 4: Rear of number 3 Queen Street



Figure 5: Rear of number 5 Queen Street

Adjoining Sites



Figure 6: Dwelling adjoining the site to the north at 1 Queen Street



Figure 7: Dwelling adjoining the subject site to the south at 7 Queen Street



Figure 8: Medium density townhouses to the north of the subject site across Morgan Street

3. SUMMARY OF AMENDMENTS

The following amendments have been made to the plans:

- The proposal has been amended from 5 dwellings to four dwellings in the form of 2 x semi-detached developments with Torrens title subdivision
- The subdivision pattern has been amended from 5 lots to subdividing each site into two lots, resulting in a total of 4 lots
- Whilst the semi-detached dwellings exceed the 0.5:1 FSR standard, the variation has been comprehensively justified in the accompanying clause 4.6 variation in **Appendix 1**.
- The proposed driveways have been amended from 5 driveways to 2 single (existing) driveways and one shared driveway for Dwelling 02 and 03 which allows for retention of on-street parking
- Side setbacks between the two semi-detached developments comply
- Rear setback has been increased
- Pool fencing detail provided

A detailed description of the changes made to each drawing is provided below:

No.	Title	Amendment
DA00	Cover Sheet	Drawing list updated
DA0	Site Analysis & Roof Plan	Plan modified to show four houses (5 previously). Lot 3 & 5 subdivided for Semi-detached dwellings.
DA02	Subdivision Plan	Subdivision pattern amended from five lots to subdivision of existing lots each into two lots.
DA03	Stage 1 – Ground Floor Plan	Updated to show stage 1 subdivision of lot 03 for semi-detached dwellings. Driveway amended to retain on street parking.
DA04	Stage 1 – First Floor Plan	Updated to show stage 1 subdivision of lot 03 for semi-detached dwellings.
DA05	Stage 2 – Ground Floor Plan	Updated to show stage 2 subdivision of lot 05 for semi-detached dwellings. Driveway amended to retain on street parking.
DA06	Stage 2 – First Floor Plan	Updated to show stage 2 subdivision of lot 05 for semi-detached dwellings.
DA07	Elevations	All elevations amended to reflect change in density, improvements in setbacks and impacts to surrounding environment.
DA08	Sections	Amended for increased rear setback and change in dwelling configuration.
DA09	GFA Diagram	Updated to reflect amended proposal
DA10	Landscape Diagram	Updated for change in configuration.
DA11	Site Management Plan	Minimal change.
DA12	Shadow Diagrams 1 of 4	Updated for change in built form.
DA13	Shadow Diagrams 2 of 4	As above
DA14	Shadow Diagrams 3 of 4	As above
DA15	Shadow Diagrams 4 of 4	As above
DA16	Streetscape Elevation	As above
DA17	Finishes Schedule	Amended to include additional information including pool fencing.
DA18	Elevational Shadow Diagrams 22 March	Height of shadows reduced.
DA19	Elevational Shadow Diagrams 21 June	As above
DA20	Photomontage	Amended to show 4 semi-detached dwellings.
DA21	Window and Door Schedule	Updated for revised BASIX certificate.

*Section 8.2 Review of Determination**3-5 Queen Street, Botany*

DA22	Vehicle Turning Diagram	New drawing to confirm compliant entering and exiting of carport.
DA23	Streetscape Analysis 1/4	Included to show character of surrounding environment, built forms and subdivision pattern.
DA24	Streetscape Analysis 2/4	As above
DA25	Streetscape Analysis 3/4	As above
DA26	Streetscape Analysis 4/4	As above

4. RESPONSE TO REASONS FOR REFUSAL

The following statement addresses the reasons for refusal in the Bayside Local Planning Panel Report, dated 9th April 2019.

- a) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in terms of bulk, scale, size, density, inconsistent with local character and subdivision pattern and would adversely impact upon the amenity of the locality.

Response: The proposal has been amended to provide 4 semi-detached dwellings with Torrens title subdivision of the existing two lots into 4 lots. These amendments have reduced the bulk, scale and density of accommodation on the subject site by 1 dwelling.

It is considered that the amended configuration of housing is consistent and compatible with the existing and desired local character of the area and preserves the low-density environment of the locality.

The amended subdivision pattern from 5 lots to 4 lots is considered to better respond to the existing fabric of the locality and is compatible with the subdivision pattern of a number of lots in the vicinity of the site, as shown on the aerial photo below:

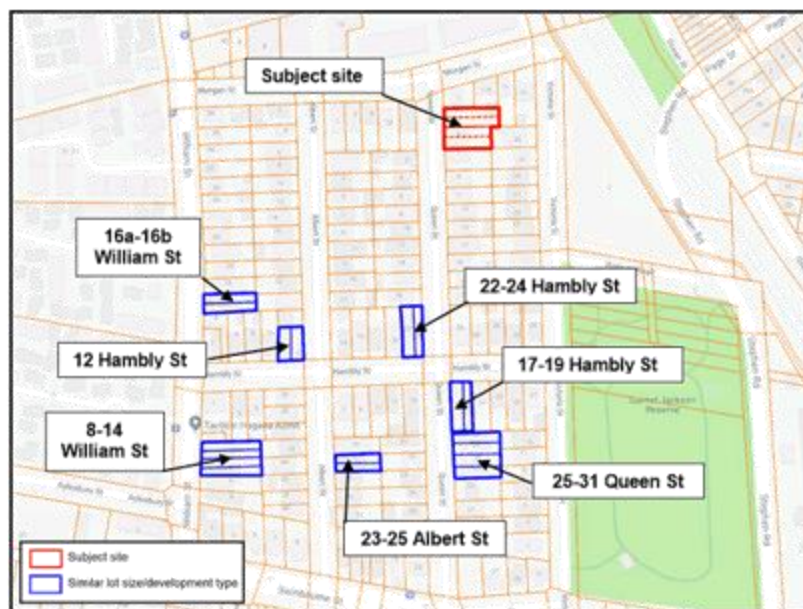


Figure 9: Subdivision map

It is considered that the above subdivision map demonstrates that the proposed Torrens title subdivision of the two existing lots into 4 lots would not be out of character with the locality. Whilst the sites immediately adjoining the subject site have not been subdivided, the above map demonstrates that semi-detached dwellings and associated Torrens title subdivision have been permitted intermittently throughout the locality and are not clustered together in one place. It is therefore considered that the proposed subdivision is consistent with this outcome.

Furthermore, the proposed semi-detached dwellings and subdivision pattern will not result in any adverse streetscape or amenity impacts to neighbouring properties.

It is considered that the 2-storey scale of the dwellings and the pitched roof form result in a positive streetscape outcome that is compatible with existing development along Queen Street and consistent with the desired future character of the area, as set out in the Botany Character Precinct (Part 8.4 of *Botany Bay DCP 2013*). The subdivision guidelines within the Character Statement require development to *"retain and preserve the rectilinear grid pattern within the Precinct"*. The accompanying subdivision plan demonstrates how the amended proposal achieves this.



Figure 10: Amended streetscape elevation

The rhythm of the streetscape is reinforced by the amended subdivision pattern and reduction of dwellings to 4 semi-detached dwellings through the siting and setbacks of the dwellings, particularly between the two pairs of dwellings.

With regard to amenity, it is considered that the proposed amendments result in improved amenity outcomes to neighbouring properties.

As demonstrated on the amended shadow diagrams, the adjoining dwelling to the south at 7 Queen Street will retain solar access to their front west-facing openings for at least 3 hours between 12pm and 3pm, noting that there are no primary openings on the northern elevation of the dwelling, as shown below:



Figure 11: Southern adjoining neighbour at 7 Queen Street will retain afternoon sunlight to their west-facing openings

The southern adjoining neighbour will also continue to receive solar access to their rear private open space between 9am and 1pm.

Adequate privacy will be achieved through the provision of compliant setbacks to northern and southern adjoining neighbours and also between the proposed pairs of semi-detached dwellings. It is reiterated that there are limited openings on the northern elevation of the southern neighbour, and likewise on the southern elevation of the northern adjoining, shown below:



Figure 12: Southern elevation of no. 1 Queen Street

Upper level balconies at the rear of each dwellings are provided with privacy screens to minimise mutual privacy and overlooking impacts. Side-facing upper-level openings are limited to highlight windows or are fitted with privacy screens.

The provision of a 1.8m height fence at the sides and rear of each property further minimise any privacy or overlooking impacts.

Any privacy impacts associated with the amended development are typical of low-density resident development and are therefore not considered unreasonable.

There are no view-loss impacts associated with the amended development.

- b) *The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.*

Response: As demonstrated above, it is considered that the proposed amendments will result in a positive streetscape outcome that is compatible with existing and desired future character of the area, without compromising the amenity of neighbouring properties.

It is reiterated that there are no unreasonable or adverse visual bulk, privacy, shadow or view loss impacts associated with the proposal. Compliant landscaping and parking further confirms the proposal will not have any undesirable impacts.

- c) Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.4A of the Botany Bay Local Environmental Plan 2013 relating to non-compliance with the floor space ratio development standard of 0.5:1. Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to floor space ratio.

Response: The amended proposal includes an overall reduction in floor space of 31sqm through the reduction of residential accommodation from 5 dwellings to 4 dwellings.

Whilst each amended dwelling still exceeds the 0.5:1 FSR standard contained within clause 4.4A of the Botany Bay LEP 2013 (each dwelling has an FSR of 0.55:1 or 0.6:1), the proposed variations are minor in nature and have been comprehensively justified in the accompanying clause 4.6 variation request in **Appendix 1**.

It is considered that the visual bulk and scale of the amended proposal sits comfortably in the streetscape and is consistent with other recent approvals in the vicinity of the subject site (12 Hamby Street, 22-24 Hamby Street). The minor FSR variations are not responsible for any unreasonable visual bulk, streetscape or amenity impacts to neighbouring dwellings in regard to overshadowing and view loss.

It is therefore considered that the proposed FSR is reasonable for each site and a variation to the LEP development standard can be supported in this instance.

- d) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the following sections of the Botany Bay Development Control Plan 2013 with respect to the following:

DCP Provision	Response
i) Part 3A – Car Parking and Access. The proposed development does not comply with the requirements of Part 3A.3.1 C28 and Part 4A.7 C2 relating to compliant vehicular access and loss of on-street parking;	The vehicular access has been amended to retain the two existing driveway crossings for Dwelling 01 and 04 and provide a shared driveway for Dwelling 02 and 03. This retains the existing on-street car spaces and results in an improved public domain outcome with incorporation of a street tree.
ii) Part 3E – Subdivision & Amalgamation. The proposed development does not comply with the requirements of Part 3E.2.2 regarding consistency with the prevailing subdivision pattern in the street;	As demonstrated above, the amended subdivision pattern is consistent with a number of lots throughout the locality and is therefore not out of character with the locality. The proposed subdivision pattern is able to accommodate 4 compliant semi-detached dwellings on each lot which achieve high internal amenity, without compromising the external amenity of neighbouring dwellings.
iii) Part 3G – Stormwater Management. The proposed development does not comply with Part 10 – Stormwater Management Technical Guidelines 5.2 (i) & (ii) and does not provide sufficient detail as to the on-site	A geotechnical investigation was undertaken as part of the original stormwater design development and its findings were incorporated into the design documentation. Additional geotechnical information accompanies this submission.

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detention system proposed on the site;	
iv) Part 3J – Aircraft Noise and OLS. The proposed development does not comply as an acoustic report was not provided with the development application, preventing an accurate assessment of aircraft noise impacts;	Not Applicable – The aircraft noise controls apply to all development within a 20 ANEF. The subject site is not located within the 20 ANEF.
v) Part 3L – Landscaping and Tree Management. The proposed development does not comply as insufficient information was provided regarding the swimming pool and rainwater tanks to be utilized for irrigation, and the proposed driveways will impact upon the existing street trees within the nature strip.	<p>The amended proposal now demonstrates how the rainwater tanks for Dwelling 01 and Dwelling 03 will be connected to the proposed pools and landscaping.</p> <p>The driveways have been amended to retain existing street trees and incorporate a new street tree.</p>
vi) Part 4A.2.8 – Building Setbacks. The proposed development does not comply with the minimum side setback requirements imposed in control 1 and 9, and is inconsistent with the dominant pattern along the street.	<p>The amended proposal has compliant side setbacks to the north and south and also between the two pairs of semi-detached dwellings.</p> <p>The compliant side setbacks ensure that the rhythm of development is compatible with the existing and desired future character of the area.</p>
vii) Part 4A.4.1 – Visual Privacy. The proposed development does not comply with control 1, 2, 3, 4, and 5, as it will pose overlooking impacts upon the adjoining properties.	<p>The proposal has been amended to ensure a high level of visual privacy is achieved.</p> <p>Side-facing openings for the proposed dwellings, particularly on upper levels, have high sill heights or are fitted with privacy screens to reduce privacy and overlooking impacts.</p> <p>Furthermore, the upper-level balconies at the rear of the dwellings have privacy screens at each side to minimise overlooking impacts into neighbouring sites and direct views into the subject rear yards only.</p> <p>The southern elevation of the northern neighbour and the northern elevation of the southern neighbour have limited openings and therefore it is considered that there will be no unreasonable privacy impacts generated by the amended proposal.</p>
viii) Part 4A.3 – Solar Access. The proposed development does not comply with control 1 regarding the minimum sunlight required for proposed and adjoining properties.	<p>The amended proposal achieves a compliant level of solar access, to the proposed semi-detached dwellings and the neighbouring properties, particularly to the south,</p> <p>The reduction of bulk and scale on the site ensures each of the living areas and private open space areas, which are located to the rear of each proposed dwelling, will receive at least 3 hours</p>

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	<p>solar access in the morning on June 21st.</p> <p>The amended shadow diagrams also demonstrate that at least 3 hours solar access will be retained to the primary west-facing openings of the southern adjoining dwelling at 7 Queen Street in the afternoon hours, whilst the rear private open space will receive solar access in the morning of June 21st.</p>
ix) Part 7O – Swimming Pools. The proposed development does not comply with Part 7O.2.4, Part 7O.2.13, and Part 7O.2.21 as insufficient information was provided relating to pool fence details and rainwater tank provisions.	Additional information is provided on the amended plans to show the 1.2m glass pool fencing details and how the rainwater tank for Dwelling 01 and 04 will be connected to the pool.
x) Part 8 – Character Precincts. The proposed development does not comply as it is inconsistent with the desired future character of the Botany Precinct.	<p>It is considered that the amended proposal is consistent with the desired future character of the locality as set out in the Botany Character Precinct statement.</p> <p>As stated in the character statement, the existing character of the area is varied in terms of the quality of residential streetscapes and setbacks within the Precinct.</p> <p>It is considered that the amended proposal is consistent with the desired future character of the area as it:</p> <ul style="list-style-type: none"> • retains and preserves the rectilinear grid pattern within the Precinct • enhances the public domain and streetscape through retention and provision of street trees and reduction of driveway crossings (from previous proposal) • maintains and enhances the quality of low-density residential accommodation that is present in the locality • maintains roof forms that reflect the characteristics of the prevailing designs within the street • retains front setbacks which are consistent with existing development • provides landscaping to soften the proposed built form

- e) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land.

Response: The amended proposal is accompanied by an updated stormwater plan to reflect the reduction of dwellings.

The applicant has requested that their hydraulic engineer contact Council's engineer to ensure conformity with this provision.

- f) Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development.

Response: The amended proposal includes a full set of amended architectural plans, elevations, sections, shadow diagrams and photomontages to allow for the thorough assessment of the amended proposal.

In addition, it is considered that the amended proposal does not generate any unreasonable environmental planning impacts, as demonstrated throughout this report.

- g) Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the proposal results in unacceptable subdivision pattern, visual privacy, solar amenity, excessive density, and car parking impacts on adjoining /nearby properties.

Response: As demonstrated in the response to the first reason for refusal, it is considered that the proposed amendments will result in a positive streetscape outcome that is compatible with existing and desired future character of the area, without compromising the amenity of neighbouring properties.

The reduced bulk, scale and density will sit comfortably in the varied context of the locality, whilst the amended subdivision pattern is consistent with the desired future character of the area, as set out in the Botany Character Precinct statement.

- h) Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest as it is likely to set an undesirable precedent, and is inconsistent with the existing and desired future character of the locality resulting in an overdevelopment of the site, creating a medium density environment in a low density context.

Response: The amended proposal is considered to be in the public interest because it satisfies the objectives of the R2 Low Density Residential zone by providing for the housing needs of the community within a low-density residential environment.

The semi-detached dwellings provide for greater housing choice and affordability in comparison to a proposal which provided 2 x 8-bedroom dwellings.

The provision of 2 pairs of semi-detached dwellings maintains the low-density residential nature of the streetscape and the amended subdivision plan is consistent with the desired future character of the area, as set out in the Botany Character Precinct statement.

5. CONCLUSION

This Statement of Environmental Effects outlines the amended proposal in response to the reasons for refusal of DA/2018/116 for demolition of the existing dwellings and construction of 4 x semi-detached dwellings with Torrens title subdivision at 3-5 Queen Street, Botany.

It is considered that the proposed amendments suitably respond to each reason for refusal and result in a positive outcome for the site and locality, whilst maintaining a high level of amenity to neighbouring properties.

It is therefore considered that the amended proposal is suitable for approval under the provisions of Section 8.2 of the Environmental Planning and Assessment Act 1979.

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3-5 Queen Street, Botany

APPENDIX 1

CLAUSE 4.6 TO CLAUSE 4.4A OF BOTANY BAY LEP 2012

EXCEPTIONS TO DEVELOPMENT STANDARDS – FSR VARIATION

*Demolition of existing dwellings, Torrens title subdivision sites into 4 lots, and construction of
2 pairs of semi-detached dwellings*

3-5 QUEEN STREET, BOTANY

PREPARED BY

ABC PLANNING PTY LTD

JUNE 2019

ABC Planning Pty Ltd

17

June 2019

BOTANY BAY LEP 2013 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the Section 8.2 review of the amended development application for the demolition of the existing dwellings, Torrens title subdivision of the sites into 4 lots and construction of 2 pairs of semi-detached dwellings at 3-5 Queen Street, Botany.

Clause 4.6 of the Botany Bay LEP 2013 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734.

Clause 4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.4A of the *Botany Bay LEP 2013* - maximum FSR 0.5:1, as shown in the following excerpt below:

4.4A Exceptions to floor space ratio for residential accommodation

(1) The objectives of this clause are as follows:

- (a) to ensure that the bulk and scale of development is compatible with the character of the locality,
 (b) to promote good residential amenity.

(2) This clause applies to land identified as "Area 3" on the Floor Space Ratio Map.

(3) Despite clause 4.4 (2), the following provisions relate to floor space ratios on land to which this clause applies:

- (a) the maximum floor space ratio for a dwelling house is not to exceed the floor space ratio applicable to the site area of the land on which the dwelling house is situated:

Site Area	Maximum Floor Space Ratio
<200 square metres	0.85:1
200–250 square metres	0.80:1
251–300 square metres	0.75:1
301–350 square metres	0.70:1
351–400 square metres	0.65:1
401–450 square metres	0.60:1
>450 square metres	0.55:1

(b) the maximum floor space ratio for multi dwelling housing is not to exceed 0.8:1,

(c) the maximum floor space ratio for a residential flat building is not to exceed 1:1,

(d) the maximum floor space ratio for all other development for the purpose of residential accommodation is 0.5:1.

The proposed development will result in the following GFAs and FSRs for the proposed lots:

Dwelling	Site Area	Control	Proposed FSR and GFA	Compliance	Variation
01	278 sqm	0.5:1	0.55:1 (154 sqm)	No	10%
02	278 sqm	0.5:1	0.55:1 (154 sqm)	No	10%
03	253 sqm	0.5:1	0.6:1 (152 sqm)	No	20%
04	253 sqm	0.5:1	0.6:1 (152 sqm)	No	20%

Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by Clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Assessment: It is considered that strict compliance with the development standard for FSR on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- Each dwelling complies with the LEP height limit and DCP setback controls for the subdivided lots. The 2-storey scale is also consistent with the scale of development anticipated by the controls. It is therefore considered that the proposed bulk and scale of the dwellings is consistent with that anticipated by the controls, and consistent with the bulk and scale envisioned by the Low Density Residential zoning.

Section 8.2 Review of Determination

3-5 Queen Street, Botany

- The proposed built forms will present as 2-storeys to Queen Street, thereby being compatible with or subservient to the mixed character of the street, as demonstrated on the streetscape elevation below:



Figure 13: Streetscape elevation showing the mixed character of dwellings either side of the subject site

- The above streetscape elevation also demonstrates that the proposed FSR variations are contained within two built forms which are of a scale and form that is compatible with the existing development along Queen Street. The proposed subdivision pattern and compliant side setbacks reinforce the rhythm of the existing and desired streetscape.
- The FSR variation is not responsible for any greater amenity impacts to neighbouring properties beyond those associated with a compliant FSR in regard to view loss, overshadowing and privacy. It is reiterated that the FSR variation is contained within a compliant building envelope.
- It is considered that the proposed bulk and scale of the semi-detached dwellings is modest in comparison to if 4 individual dwellings were proposed which can have an FSR of up to 0.75:1 on lots with an area of 251 sqm – 300 sqm.
- Council have supported variations to the FSR standard in the past for semi-detached dwelling developments, including at 12 Hambly Street, Botany (2017/1158, 0.67:1 and 0.59:1 approved), and 79 Middlemiss Street, Mascot (DA-2017/1023, 0.67:1 for each dwelling approved). The proposed FSR variations are less than these approvals.
- The high-quality design and colours, materials and finishes, combined with a compliant level of landscaping on each site softens the visual bulk of each dwelling.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the FSR standard in the LEP	
Objectives	Assessment
4.4(a) to establish standards for the maximum development density and intensity of land use,	Whilst the proposed development exceeds the 0.5:1 FSR standard contained within clause 4.4A of the LEP, it is reiterated that clause 4.6 of the LEP provides an appropriate degree of flexibility in applying certain development standards. It is considered that this clause 4.6 variation request demonstrates that there are sufficient grounds to permit an FSR variation in this instance.
4.4(b) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,	The proposal provides for a built form that is consistent and compatible with the character of the local area in that it provides a development that is of a similar scale and typology with to surrounding development and maintains the low-density environment of the area. Given that the proposed semi-detached dwellings have a compliant height and compliant setbacks, it is considered that the bulk and scale is contained within a compliant building envelope and is therefore compatible with the desired future character of the area, as envisioned by the controls and zoning. The recessed nature of the first floor component,

Section 8.2 Review of Determination

3-5 Queen Street, Botany

	combined with lightweight materials and finishes provide for a modest form of housing which sits comfortably amongst existing housing stock.
<i>4.4(c) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,</i>	<p>The subject site is located in an area of mixed character, low density development, with medium density development located nearby to the north-west across Morgan Street.</p> <p>It is considered that the locality undergoing transition, where older outdated housing stock is being replaced with new contemporary development. This is evident at 12 Hambly Street where consent has been granted to replace a single dwelling with 2 semi-detached dwellings, a single dwelling at the rear and Torrens title subdivision of the site into 3 lots (DA-2017/1158).</p> <p>It is considered that the proposal will result in a positive outcome for the subject site that will maintain an appropriate visual relationship with existing development along Queen Street and any future development that will occur in the vicinity of the site.</p> <p>It is considered that the proposed subdivision pattern (as amended) is compatible with the locality and the desired future character of the area as set out in the Botany Character Precinct statement in part 8.4 of the DCP, as it retains and preserves the rectilinear grid pattern within the Precinct.</p> <p>The amended subdivision pattern reinforces the rhythm of the street through appropriate heights and setbacks. It is therefore considered that the visual presentation of the proposed FSR is appropriate for the site and consistent with the desired future character of the area.</p>
<i>4.4(d) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities,</i>	<p>The proposed semi-detached dwellings will not adversely affect the streetscape, as demonstrated by the accompanying streetscape elevation and photomontage.</p> <p>The compliant height and setbacks, combined with a 2-storey scale and pitched roof form results in a built form that is compatible with the existing low density, mixed character of the area.</p> <p>The provision of landscaping in the front, side and rear setbacks softens the visual appearance of the bulk and scale and retains the character of the area as intended by the controls.</p> <p>The proposed FSR would not be visually obtrusive when viewed from any public place.</p>
<i>4.4(e) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,</i>	<p>The amended proposal has been carefully designed to minimise amenity impacts to neighbouring properties.</p> <p>The proposed semi-detached dwelling development will retain at least 3 hours solar access to the primary openings and private open space area of the southern adjoining dwelling, whilst privacy impacts are minimised by restricting the number of side-facing openings and providing privacy screens on the upper-level balconies with the rear of each dwelling.</p> <p>The proposed built form will not dominate the streetscape</p>

Section 8.2 Review of Determination

3-5 Queen Street, Botany

	or be visually overbearing when viewed from any public or private place.
4.4(f) to provide an appropriate correlation between the size of a site and the extent of any development on that site,	It is considered that the proposed semi-detached dwellings are suitable for their respective subdivided lots given that they all comply with the LEP height limit, and DCP building envelope controls including setbacks, landscaped open space, deep soil planting. It is therefore considered that the proposed dwellings, notwithstanding the FSR variation, represent an appropriate correlation between the subdivided lot sizes and the extent of development.
4.4(g) to facilitate development that contributes to the economic growth of Botany Bay.	It is considered that the replacement of two dwellings with 4 high-quality semi-detached dwellings provide for the housing needs of the community and represent an orderly and economic use of the sites, thereby contributing to the growth of Botany Bay, whilst maintaining the low-density residential environment of the locality.
Consistency with the objectives of the R2 Low Density Residential zone	
Objectives	Assessment
<ul style="list-style-type: none"> To provide for the housing needs of the community within a low-density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To encourage development that promotes walking and cycling. 	<p>The proposed FSR variation does not hinder the proposal's ability to satisfy the zone objectives.</p> <p>The FSR variation is associated with semi-detached dwellings which are permissible in the R2 Low Density Residential zone and provide for the housing needs of the community by replacing two single dwellings with 4 semi-detached dwellings that achieve high internal amenity.</p> <p>The location of the subject sites within walking distance to Garnet Jackson Reserve (350m south-east) encourage walking and cycling.</p>

Based on the above assessment, it is considered that strict compliance with the LEP FSR standard is unreasonable and unnecessary in this instance.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard

Assessment: It is considered that there are sufficient environmental planning grounds to justify varying the FSR development standard, which include:

- The proposed FSR variation allows all dwellings to achieve high internal amenity without compromising the external amenity of neighbouring properties. If strict compliance with the FSR standard was required, reducing the floor space of each dwelling by 15 sqm (Dwelling 01 and 02) and 25.5 sqm (Dwelling 03 and 04) would compromise the high-level of internal amenity achieved and the reduction would not result in any discernible improvement to the amenity of neighbouring properties, particularly as the proposed semidetached dwellings already comply with the LEP height limit and DCP setback controls.
- The bulk and scale of the proposed semi-detached dwellings is consistent with existing low-density residential development in the vicinity of the subject site. The proposed 2-storey scale with pitched roof, combined with compliant side setbacks results in a positive streetscape outcome which is compatible with existing and desired future character of the area.

- The articulated facades and provision of landscaping within the front, side and rear setbacks softens the visual appearance of the built forms and retains the character of the area as intended by the controls
- In addition to the above, compliance with the DCP open space and deep soil planting controls demonstrate that there are sufficient environmental grounds to permit the FSR variation in this instance.

Other Matters for Consideration

4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Assessment: The above assessment demonstrates that the proposed FSR satisfies the objectives of the FSR standard and the R2 Low Density Residential zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the minor FSR variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

Assessment: The proposed height variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed FSR allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area.

The proposed FSR is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional height and density near transport and established services.

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: There are not considered to be any additional matters to consider beyond those discussed above

*Section 8.2 Review of Determination**3-5 Queen Street, Botany***Conclusion**

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 3-5 Queen Street, Botany and is requested to be looked upon favourably by the consent authority.

ABC Planning Pty Ltd

24

June 2019





Contents

C2 Development Applications shall demonstrate that the proposed subdivision is consistent with the Desired Future Character of the area (refer to relevant sections in **Part 8 - Character Precincts**, **Part 9 - Key Sites** **Part 5 - Business Centres** and **Part 6 - Employment Zones**).

C3 Proposed subdivision or amalgamation must have characteristics similar to the prevailing subdivision pattern of lots forming the same street, in terms of area, dimensions, shape and orientation.

Note: Council generally considers the 'prevailing subdivision pattern' to be the typical characteristics of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site. Properties located in the surrounding streets do not usually form part of the streetscape character and are therefore not taken into consideration when determining the prevailing subdivision pattern.

C4 Development Applications which propose the creation of new allotments must be accompanied by a site-specific building plan that demonstrates compliance with all relevant DCP controls.

C4 Notwithstanding Control C2 above, land within Area H1 and H2 (refer to Figure 2, **Figures 3 and Part 8 - Character Precincts**) may have a minimum lot width of 5 metres.

Note: Building height is restricted to 3 metres.

Note: Development Applications for Subdivision in Areas H1 and H2 are to be accompanied by a detailed site analysis and dwelling design that satisfies Council that the amenity of neighbouring residential properties are protected in terms of sunlight and natural daylight access, privacy and visual amenity.

C3 Proposed lots must be of a size and have dimensions to enable the siting and construction of a dwelling and ancillary structures that:

- (i) Acknowledge site constraints;
- (ii) Address the street;
- (iii) Minimise impacts on adjoining properties including access to sunlight, daylight, privacy and views;
- (iv) Provide usable private open space;
- (v) Provide vehicle access;
- (vi) Protect existing vegetation;
- (vii) Mitigate potential flood affectation and stormwater management requirements;
- (viii) Acknowledge concentration of the land; and
- (ix) Protect Heritage Items, Conservation Areas and land adjoining Heritage Items.

C5 Subdivision or amalgamation must not result in the creation of a new lot that contains significant site features that would render the land unable to be developed (e.g. creation of allotments that are solely burdened by easements, flooding, highly contaminated land or land of a size which could not facilitate development as per the zoning and development standards applicable to the land).

C7 All lots created shall have at least one (1) frontage to the street.

C8 Inter-allotment drainage easement shall be provided if any proposed lots are not able to drain stormwater runoff from the site to a street or public drain way.

C9 Subdivision and amalgamation is not permitted in areas identified to be affected by proposed 2100 sea level rise of 0.9 metres above the Australian Height Datum unless it can be demonstrated that potential impacts can be mitigated (refer to Sydney Coastal Council and CSIRO – Mapping and Responding to Sea Level Rise).



Examples of prevailing subdivision pattern in the subject street

[illegible]

2000 *Journal of Management Education* 24(1): 1-10

Team Planner
Consultant: JRC Planning Inc.
Address: 1000 N. 19th Avenue, Suite 200
 Denver, CO 80202
Phone: 303.733.4670
Web: www.jrcplanning.com

Device	
Controller	Video Engineering
Address	21000, 21008, 21010, 21012, 21014, 21016, 21018, 21020, 21022, 21024, 21026, 21028, 21030, 21032, 21034, 21036, 21038, 21040, 21042, 21044, 21046, 21048, 21050, 21052, 21054, 21056, 21058, 21060, 21062, 21064, 21066, 21068, 21070, 21072, 21074, 21076, 21078, 21080, 21082, 21084, 21086, 21088, 21090, 21092, 21094, 21096, 21098, 21100, 21102, 21104, 21106, 21108, 21110, 21112, 21114, 21116, 21118, 21120, 21122, 21124, 21126, 21128, 21130, 21132, 21134, 21136, 21138, 21140, 21142, 21144, 21146, 21148, 21150, 21152, 21154, 21156, 21158, 21160, 21162, 21164, 21166, 21168, 21170, 21172, 21174, 21176, 21178, 21180, 21182, 21184, 21186, 21188, 21190, 21192, 21194, 21196, 21198, 21200, 21202, 21204, 21206, 21208, 21210, 21212, 21214, 21216, 21218, 21220, 21222, 21224, 21226, 21228, 21230, 21232, 21234, 21236, 21238, 21240, 21242, 21244, 21246, 21248, 21250, 21252, 21254, 21256, 21258, 21260, 21262, 21264, 21266, 21268, 21270, 21272, 21274, 21276, 21278, 21280, 21282, 21284, 21286, 21288, 21290, 21292, 21294, 21296, 21298, 21300, 21302, 21304, 21306, 21308, 21310, 21312, 21314, 21316, 21318, 21320, 21322, 21324, 21326, 21328, 21330, 21332, 21334, 21336, 21338, 21340, 21342, 21344, 21346, 21348, 21350, 21352, 21354, 21356, 21358, 21360, 21362, 21364, 21366, 21368, 21370, 21372, 21374, 21376, 21378, 21380, 21382, 21384, 21386, 21388, 21390, 21392, 21394, 21396, 21398, 21400, 21402, 21404, 21406, 21408, 21410, 21412, 21414, 21416, 21418, 21420, 21422, 21424, 21426, 21428, 21430, 21432, 21434, 21436, 21438, 21440, 21442, 21444, 21446, 21448, 21450, 21452, 21454, 21456, 21458, 21460, 21462, 21464, 21466, 21468, 21470, 21472, 21474, 21476, 21478, 21480, 21482, 21484, 21486, 21488, 21490, 21492, 21494, 21496, 21498, 21500, 21502, 21504, 21506, 21508, 21510, 21512, 21514, 21516, 21518, 21520, 21522, 21524, 21526, 21528, 21530, 21532, 21534, 21536, 21538, 21540, 21542, 21544, 21546, 21548, 21550, 21552, 21554, 21556, 21558, 21560, 21562, 21564, 21566, 21568, 21570, 21572, 21574, 21576, 21578, 21580, 21582, 21584, 21586, 21588, 21590, 21592, 21594, 21596, 21598, 21600, 21602, 21604, 21606, 21608, 21610, 21612, 21614, 21616, 21618, 21620, 21622, 21624, 21626, 21628, 21630, 21632, 21634, 21636, 21638, 21640, 21642, 21644, 21646, 21648, 21650, 21652, 21654, 21656, 21658, 21660, 21662, 21664, 21666, 21668, 21670, 21672, 21674, 21676, 21678, 21680, 21682, 21684, 21686, 21688, 21690, 21692, 21694, 21696, 21698, 21700, 21702, 21704, 21706, 21708, 21710, 21712, 21714, 21716, 21718, 21720, 21722, 21724, 21726, 21728, 21730, 21732, 21734, 21736, 21738, 21740, 21742, 21744, 21746, 21748, 21750, 21752, 21754, 21756, 21758, 21760, 21762, 21764, 21766, 21768, 21770, 21772, 21774, 21776, 21778, 21780, 21782, 21784, 21786, 21788, 21790, 21792, 21794, 21796, 21798, 21800, 21802, 21804, 21806, 21808, 21810, 21812, 21814, 21816, 21818, 21820, 21822, 21824, 21826, 21828, 21830, 21832, 21834, 21836, 21838, 21840, 21842, 21844, 21846, 21848, 21850, 21852, 21854, 21856, 21858, 21860, 21862, 21864, 21866, 21868, 21870, 21872, 21874, 21876, 21878, 21880, 21882, 21884, 21886, 21888, 21890, 21892, 21894, 21896, 21898, 21900, 21902, 21904, 21906, 21908, 21910, 21912, 21914, 21916, 21918, 21920, 21922, 21924, 21926, 21928, 21930, 21932, 21934, 21936, 21938, 21940, 21942, 21944, 21946, 21948, 21950, 21952, 21954, 21956, 21958, 21960, 21962, 21964, 21966, 21968, 21970, 21972, 21974, 21976, 21978, 21980, 21982, 21984, 21986, 21988, 21990, 21992, 21994, 21996, 21998, 22000, 22002, 22004, 22006, 22008, 22010, 22012, 22014, 22016, 22018, 22020, 22022, 22024, 22026, 22028, 22030, 22032, 22034, 22036, 22038, 22040, 22042, 22044, 22046, 22048, 22050, 22052, 22054, 22056, 22058, 22060, 22062, 22064, 22066, 22068, 22070, 22072, 22074, 22076, 22078, 22080, 22082, 22084, 22086, 22088, 22090, 22092, 22094, 22096, 22098, 22100, 22102, 22104, 22106, 22108, 22110, 22112, 22114, 22116, 22118, 22120, 22122, 22124, 22126, 22128, 22130, 22132, 22134, 22136, 22138, 22140, 22142, 22144, 22146, 22148, 22150, 22152, 22154, 22156, 22158

Landings	
Contact address	FDS, Pioneer Design Studio 11475 75 Avenue, Suite 100, Irvine, CA 92618-2007
Phone	949-453-4900
Website	www.fdsdesign.com

Pharmacy
 Consultant: TMA Consulting Engineers
 Address: 26-28 Prince Street, Cork
 A66100100
 Phone: 00353 21 494 750
 e-mail: tony_phill@tma.ie

Quanta Services
Company: Commercial Contractors
Address: 1000 70th Avenue Blvd.
Parsippany NJ 07054
Phone: 973 260-3000
e-mail: marketing@quanta-services.com

2-6 Queen Street, Sydney 2016

[illegible]





1 Streetscape Elevation
1:200

4A.2.4 Streetscape Presentation

Before Day Development Control Plan 2015 (downloaded 15/09/2017)

General Controls

G1 New buildings must be designed to reflect the relevant Desired Future Character Statement in Part 4 - Character Precincts and are to reinforce the architectural features and identify which contribute to its character. Applicants must address the design principles outlined in the statement.

G2 Development must be designed to reinforce and maintain the existing character of the streetscape.

G3 Development must reflect dominant roof lines and patterns of the existing streetscape (refer to Figure 3).

Note: Contemporary architectural design solutions are encouraged, however designs are not to demonstrate that they do not lead to a replacement or diminution of a street's existing character. Council encourages diversity in housing design provided that development outcomes complement the existing character of the street.

G4 Buildings must appropriately address the street. Buildings that are intrusive or inconsistent with the established development pattern will not be permitted.

G5 Developments in sites with low or more frontages should address both frontages.

G6 The entrance to a dwelling must be clearly apparent from the street.

G7 Gables are to be flush with the street front and a habitable room to encourage passive surveillance.

G8 Gables are to be flush with the roof surface and located to the rear of a building.

G9 A street number for the property is to be clearly identifiable from the street.

G10 Development must retain characteristic design features prevalent in houses in the street including: verandas, front porches, gabled awnings, bay windows, floor coverings or other details.

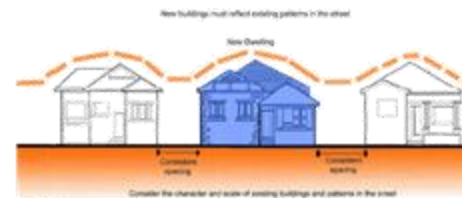
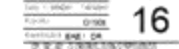


Figure 3 - Streetscape Continuity















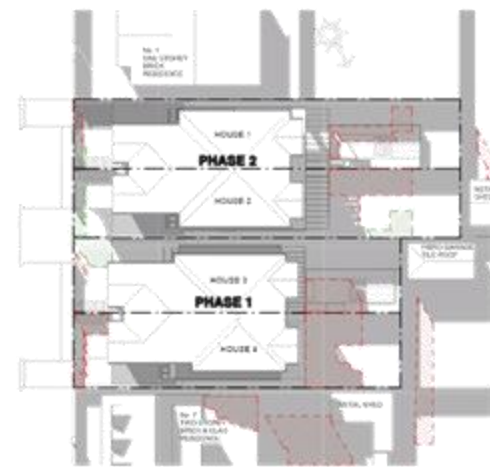




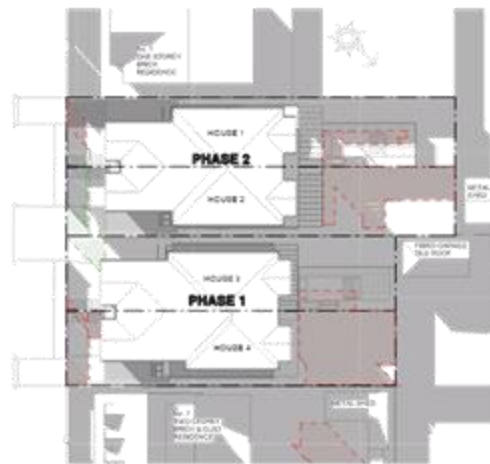




PROPOSED 22/06 1pm



PROPOSED 22/06 2pm



PROPOSED 22/06 3pm

DCP Controls

Solar Access

4A.4.3 C1 - Buildings (including alterations/additions/extensions) are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in living areas (family rooms, rumpus, lounge and kitchens) and to 50% of the primary private open space areas of both the subject site and adjoining properties.

LEGEND:

-  <https://www.youtube.com/watch?v=3D4333333333>
 <https://www.instagram.com/3D4333333333>
 <https://www.facebook.com/3D4333333333>

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Application Details

Application Number:	2018/1169
Date of Receipt:	14 September 2018
Property:	3-5 Queen Street Botany Lot B DP 150047, Lot C DP 150047
Owners:	Clive Hillier & Sandra Monk
Applicant:	Botany Terraces Pty Ltd
Proposal:	Demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of two (2) semi-detached dwellings, three (3) attached dwellings, swimming pool and two (2) cabanas.
Recommendation:	Refusal, subject to reasons of refusal below
Value:	\$2,017,939.00
No. of submissions:	Seven (7) Submissions
Author:	Ana Trifunovska, Development Assessment Planner
Date of Report:	26 March 2019

Key Issues

Bayside Council received Development Application No. 2018/1169 on 14 September 2018 seeking consent for the demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of five (5) attached dwellings, swimming pool and two (2) cabanas at 3-5 Queen Street, Botany.

The application was placed on public exhibition for a 14 day period from the 20th September 2018 until the 5th October 2018. Seven (7) submissions were received in response.

Key issues in the assessment of the development application include non-compliances with the FSR development standard within the Botany Bay Local Environmental Plan 2013, and non-compliances with the BBDCP 2013 requirements for subdivision pattern, vehicular access, setbacks, solar access, stormwater management, aircraft noise attenuation and streetscape presentation.

The key issue is the non-compliance with the prevailing subdivision pattern which subsequently impacts upon other issues such as streetscape presentation, solar access, setbacks and vehicular access. The proposed design is not compatible with the existing built form or prevailing subdivision pattern in the area and therefore is not consistent with the desired future character for the Botany Character Precinct.

In accordance with the Botany Bay Local Environmental Plan 2013, the proposal does not comply with the maximum 0.5:1 FSR development standard as the proposal seeks an overall FSR of 0.61:1. The applicant provided a Clause 4.6 variation for the FSR, however Council does not support the variation.

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* (EPA Act) and is recommended for refusal, subject to the reasons of refusal in the attached schedule.

Recommendation

It is RECOMMENDED:

1. That the Bayside Local Planning Panel is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to Clause 4.4A- Floor space ratio;
2. That the Development Application No. 2018/1169 for the demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of five (5) attached dwellings, swimming pool and two (2) cabanas at 3-5 Queen Street, Botany, be REFUSED pursuant to Section 4.6(1)(b) of the *Environmental Planning and Assessment Act 1979* (EPA Act) and is recommended for refusal subject to the following reasons:
 - a) Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is excessive in terms of bulk, scale, size, density, inconsistent with local character and subdivision pattern and would adversely impact upon the amenity of the locality.
 - b) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
 - c) Pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposed development does not satisfy Clause 4.4A of the Botany Bay Local Environmental Plan 2013 relating to non-compliance with the floor space ratio development standard of 0.5:1. Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to floor space ratio.
 - d) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not meet the following sections of the Botany Bay Development Control Plan 2013 with respect to the following:
 - i) Part 3A – Car Parking and Access. The proposed development does not comply with the requirements of Part 3A.3.1 C28 and Part 4A.7 C2 relating to compliant vehicular access and loss of on-street parking;
 - ii) Part 3E – Subdivision & Amalgamation. The proposed development does not comply with the requirements of Part 3E.2.2 regarding consistency with the prevailing subdivision pattern in the street;
 - iii) Part 3G – Stormwater Management. The proposed development does not comply with Part 10 – Stormwater Management Technical Guidelines

- 5.2 (i) & (ii) and does not provide sufficient detail as to the on-site detention system proposed on the site;
- iv) Part 3J – Aircraft Noise and OLS. The proposed development does not comply as an acoustic report was not provided with the development application, preventing an accurate assessment of aircraft noise impacts;
 - v) Part 3L – Landscaping and Tree Management. The proposed development does not comply as insufficient information was provided regarding the swimming pool and rainwater tanks to be utilized for irrigation, and the proposed driveways will impact upon the existing street trees within the nature strip.
 - vi) Part 4A.2.8 - Building Setbacks. The proposed development does not comply with the minimum side setback requirements imposed in control 1 and 9, and is inconsistent with the dominant pattern along the street.
 - vii) Part 4A.4.1 – Visual Privacy. The proposed development does not comply with control 1, 2, 3, 4, and 5, as it will pose overlooking impacts upon the adjoining properties.
 - viii) Part 4A.3 – Solar Access. The proposed development does not comply with control 1 regarding to the minimum sunlight required for proposed and adjoining properties.
 - ix) Part 7O – Swimming Pools. The proposed development does not comply with Part 7O.2.4, Part 7O.2.13, and Part 7O.2.21 as insufficient information was provided relating to pool fence details and rainwater tank provisions.
 - x) Part 8 – Character Precincts. The proposed development does not comply as it is inconsistent with the desired future character of the Botany Precinct.
- e) Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land.
 - f) Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development.
 - g) Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, the proposal results in unacceptable subdivision pattern, visual privacy, solar amenity, excessive density, and car parking impacts on adjoining /nearby properties.
 - h) Pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not considered to be in the public interest as it is likely to set an undesirable precedent, and is inconsistent with the existing and desired future character of the locality resulting in an overdevelopment of the site, creating a medium density environment in a low density context.

3. That the objectors be informed of the Bayside Local Planning Panel's decision.

Background

History – Approved Development

There is no recent town planning history on the site.

However, a Pre-DA was lodged on the 7 August 2018. A meeting was not held as the application was withdrawn.

Development Application History

- 14 September 2018 – Development Application was lodged with Council.
- 20 September 2018 – 5 October – Development Application was publicly notified.
- 15 October 2018 – Preliminary comments from the original Pre-DA were sent to the applicant.
- 19 November 2018 – Meeting was held with the applicant to discuss concerns and amendments.
- 4 December – Amended plans were submitted to Council addressing concerns discussed in the meeting.
- 28 February 2018 – The applicant was informed that the proposal would not be supported.

Description of Proposal

The development application seeks consent for the demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of two (2) semi-detached dwellings, three (3) attached dwellings, swimming pool, and two (2) cabanas at 3-5 Queen Street, Botany.

The specifics of the proposal are as follows:

- Demolition of all structures on the site including the rear shed structures and above ground swimming pool;
- The Torrens Title subdivision of the existing two (2) lots into five (5) lots;
- The construction of five x two storey attached dwellings with arrangements as follows:

	<i>Ground Floor</i>	<i>First Floor</i>
<i>House 01</i>	<ul style="list-style-type: none"> • Single attached garage with waste storage; 	<ul style="list-style-type: none"> • Front facing Bedroom 01 with balcony; • Bedroom 02;

	<ul style="list-style-type: none"> • Open plan kitchen, dining and living area; • Powder Room; • Laundry; • Alfresco; • Cabana at the rear of the lot. 	<ul style="list-style-type: none"> • Bedroom 03; • Rear facing Master Bedroom with balcony and ensuite; • Bathroom.
House 02	<ul style="list-style-type: none"> • Single carport with waste storage room; • Open plan kitchen, dining and living area; • Powder Room; • Laundry; • Alfresco; • In-ground swimming pool; • Cabana at the rear of the lot. 	<ul style="list-style-type: none"> • Front facing Bedroom 01 with balcony; • Bedroom 02; • Bedroom 03; • Rear facing Master Bedroom with balcony and ensuite; • Bathroom.
House 03	<ul style="list-style-type: none"> • Single carport with waste storage room; • Open plan kitchen, dining and living area; • Powder Room; • Laundry; • Alfresco. 	<ul style="list-style-type: none"> • Front facing Bedroom 01 with balcony; • Bedroom 02; • Rear facing Master Bedroom with ensuite; • Bathroom.
House 04	<ul style="list-style-type: none"> • Single attached garage with waste storage and laundry; • Open plan kitchen, dining and living area; • Internal courtyard; • Powder Room; • Alfresco. 	<ul style="list-style-type: none"> • Front facing Bedroom 01 with balcony; • Bedroom 02; • Rear facing Master Bedroom with ensuite; • Bathroom.
House 05	<ul style="list-style-type: none"> • Single attached garage with waste storage; • Open plan kitchen, dining and living area; • Powder Room; • Laundry/Pantry; • Alfresco. 	<ul style="list-style-type: none"> • Front facing Bedroom 01 with balcony; • Bedroom 02; • Rear facing Master Bedroom with ensuite; • Bathroom.



Figure 1: Proposed Front Elevation



Figure 2: Proposed Rear Elevation

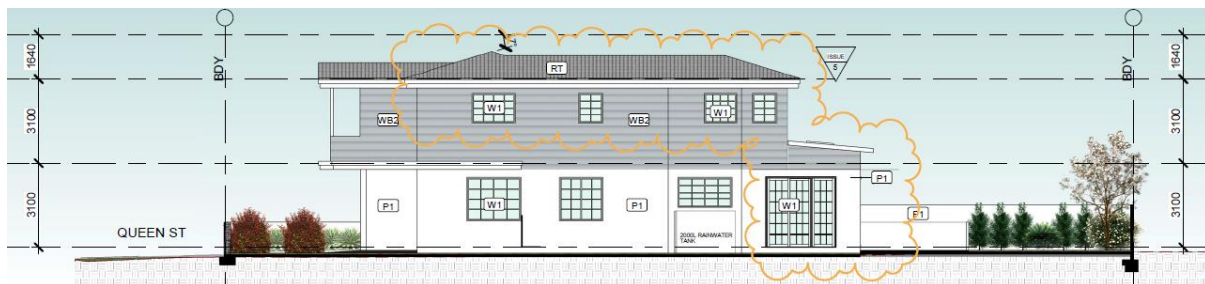


Figure 3: Proposed Side Elevations

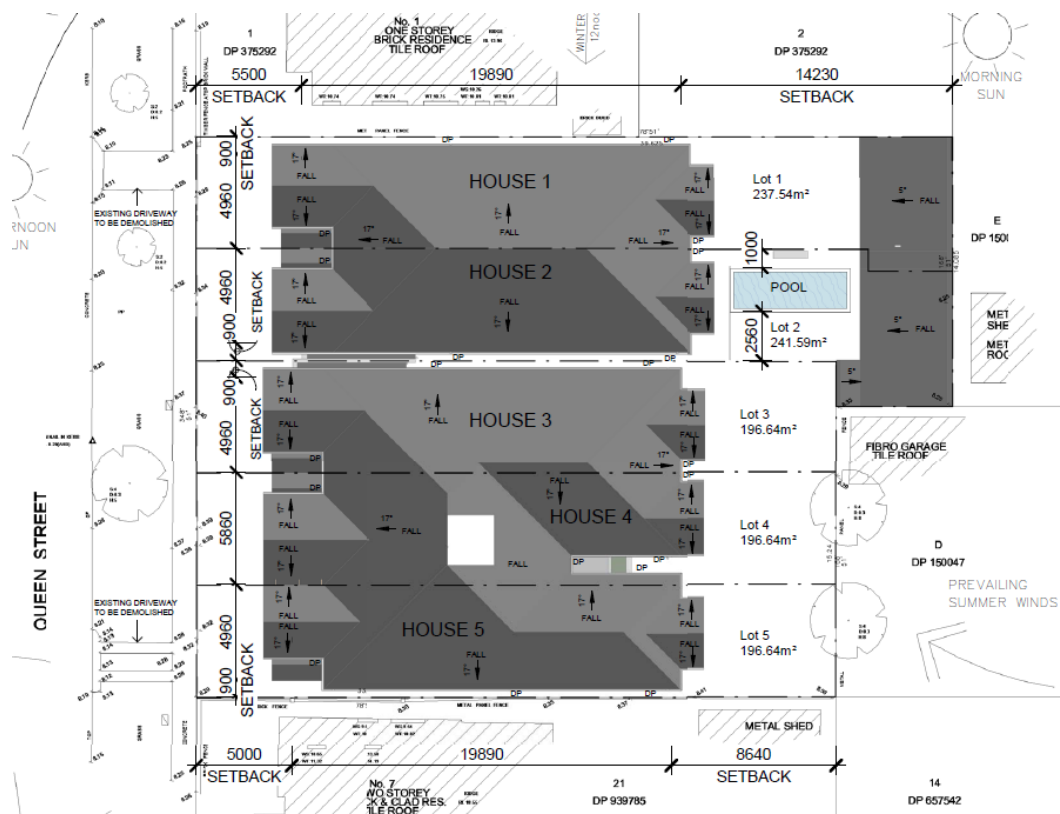


Figure 4: Proposed Site Plan

Site Description

The sites are legally known as Lot B DP 150047 and Lot C DP 150047. The subject site is located on the eastern side of Queen Street between Morgan Street to the north and Hamby Street to the south. The lot has an east to west orientation with the western side facing the street frontage and the eastern side facing the rear boundary. The site is located in the R2 Low Density Residential Zone.

3 Queen Street is rectangular in shape with a total site area of 556.4 sqm (site survey) and a street frontage and rear boundary width of 14.085m. Its northern and southern boundaries are 39.625m in length. 5 Queen Street is also rectangular in shape with a total site area of 505.9 sqm (site survey) and a street frontage and rear boundary width of 15.24m. Its northern and southern boundaries are 33.53m in length. Both sites are relatively flat in topography.

Existing development at 3 Queen Street comprises of a single storey detached weatherboard dwelling with a clad garage and clad shed at the rear of the site. Existing development at 5 Queen Street comprises of a single storey brick rendered detached dwelling house with tile roof, and a detached brick shed and above ground swimming pool at the rear of the site.

There are two (2) trees located within the nature strip which are to be retained and protected. There are also a number of trees within the adjacent lots which are to be retained and protected.

The adjoining site at 1 Queen Street contains a single storey detached brick dwelling, and the adjoining site at 7 Queen Street contains a brick and weatherboard clad two storey detached

dwelling with metal shed in the rear. The sites abutting to the rear include 11A Morgan Street, 11 Morgan Street and 33 Victoria Street which all contain single storey dwellings. Development surrounding the site is quite distinct as it predominately consists of single and double storey detached dwellings on consistent rectilinear lots (Refer to the images below).



Figure 5: Subject site highlighted in red



Figure 6: Satellite imagery - subject site highlighted in red



Figure 7: 3 Queen Street Botany



Figure 8: 5 Queen Street Botany



Figure 9: 7 Queen Street Botany – Southern adjoining property



Figure 10: 1 Queen Street Botany – Northern adjoining property

Statutory Considerations

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S.4.15(1) - Matters for Consideration – General

S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

1. *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate No. 957459M_03 dated 05 September 2018 prepared by Vipac committing to environmental sustainable measures.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of the development application, along with the requirements of Part 3K- Contamination of the Botany Bay Development Control Plan 2013. The likelihood of encountering contaminated soils on the subject site is considered to be extremely low given the following:

1. The site appears to have been continuously used for residential purposes;
2. The adjoining and adjacent properties are currently used for residential purposes;
3. The site and surrounding land were not previously zoned for purposes identified under Table 1 of the contaminated land-planning guide in SEPP 55, in particular industrial, agricultural or defence uses.
- 2.
3. On this basis, the site is considered suitable in its present state for the proposed residential development. No further investigations of contamination are considered necessary.
- 4.

Botany Bay Local Environmental Plan 2013

Botany Bay Local Environmental Plan 2013 has been considered in the assessment of the Development Application and the following information is provided:

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
Land use Zone	Yes	The site is zoned R2 Low Density Residential zone under the Botany Bay Local Environmental Plan 2013.
Is the proposed use/works permitted with development consent?	Yes	The proposed use is attached and semi-detached dwellings which is permissible with Council's consent under the Botany Bay Local Environmental Plan 2013.
Does the proposed use/works meet the objectives of the zone?	Yes	The proposed development is consistent with the following objectives of the R2 Low Density Residential Zone: <ul style="list-style-type: none"> • To provide for the housing needs of the community within a low density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To encourage development that promotes walking and cycling.
Does Schedule 1 – Additional Permitted Uses apply to the site? If so what additional uses are permitted on the site?	N/A	Schedule 1 does not apply to the site.
Does the proposed use/works require development consent for demolition?	Yes	The proposed development seeks consent for the demolition of all existing structures on site and hence satisfies the provisions of this Clause.
What is the height of the building? Does the height of the building comply with the maximum building height?	Yes	A maximum height of 8.5 metres applies to the subject site.

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
		The development has a maximum height of 8.5 metres from the NGL. This complies with the provisions of the BBLEP 2013.
<p>What is the proposed Floor Space Ratio?</p> <p>Does the Floor Space Ratio of the building comply with the maximum Floor Space Ratio?</p>	No- Refer to Note 1 – Clause 4.6 Variation relating to FSR Standard	<p>The maximum Floor Space Ratio requirement is 0.5:1.</p> <p>The following FSR's are calculated for each proposed dwelling:</p> <p>House 01: 0.6:1 (143.7 sqm) House 02: 0.59:1 (143.6 sqm) House 03: 0.61:1 (119.4 sqm) House 04: 0.61:1 (119.9 sqm) House 05: 0.61:1 (119.6 sqm)</p> <p>The Floor Space Ratio of the development does not comply with Council's requirements under the Botany Bay Local Environmental Plan 2013. A clause 4.6 variation has been provided with the development application which is addressed in Note 1 below.</p>
<p>Is the site within land marked "Area 3" on the Floor Space Ratio Map?</p> <p>If so, does it comply with the sliding scale for Floor Space Ratio in Clause 4.4A?</p>	No- Refer to Note 1 – Clause 4.6 Variation relating to FSR Standard	The site is located in an Area 3 zone. The proposal does not comply with the maximum FSR.
Is the land affected by road widening?	N/A	The subject site is not affected by road widening.
Is the site listed in Schedule 5 as a heritage item or within a Heritage Conservation Area?	N/A	The site is not listed as a heritage item, nor is it located within a Heritage Conservation Area.
<p>The following provisions in Part 6 of Botany Bay Local Environmental Plan apply–</p> <ul style="list-style-type: none"> 6.1 – Acid Sulfate Soils 	Yes	The site is located in a Class 4 Acid Sulfate Soils Area. Excavation is required on site for the proposed in-ground swimming. However, the excavation does not extend 1.8 metres below natural ground level (NGL) and the watertable is unlikely to be lowered more than 2 metres below NGL, therefore an Acid Sulfate Soils Management Plan is not required and the proposal is considered acceptable.
<ul style="list-style-type: none"> 6.2 – Earthworks 	Yes	The proposal does not involve extensive excavation other than earthworks associated with the in-ground swimming pool, foundations and footings.
<ul style="list-style-type: none"> 6.3 – Stormwater Management 	No	The proposed development was referred to Council's Development Engineer. The

Relevant Clauses Principal Provisions of Botany Bay Local Environmental Plan 2013	Compliance Yes/No	Comment
<ul style="list-style-type: none"> 6.8 – Airspace Operations 6.9 – Development in areas subject to aircraft noise 	<p>Yes</p> <p>No – Refer to Part 3J - Aircraft Noise and OLS</p>	<p>stormwater system proposed is not supported as no geotechnical report was provided to justify the infiltration rate used in the design of the infiltration stormwater system. The site is located within a groundwater exclusion compliance zone and a geotechnical report is mandatory when considering works below ground. It should also be noted that the infiltration rate used is greater than the maximum allowable under the DCP. There is insufficient information for Council to complete an accurate assessment of the development impacts on stormwater management.</p> <p>The subject site is affect by the 51m OLS height limit. However, the maximum RL height of the building sits at 16.489m AHD and will therefore not penetrate the maximum height limit.</p> <p>The site falls within the 20-25 ANEF Contour. The development will result in an increase in the number of dwellings and people affected by aircraft noise. An acoustic report was not provided therefore Council was unable to complete an accurate assessment.</p>

Note 1 – Clause 4.6 Variation relating to FSR Standard

The applicant seeks to vary the Floor Space Ratio development standard of 0.5:1 under the BBLEP2013. Refer to the below gross floor area and proposed FSR calculations (Council calculations) for each dwelling below:

Lot	Site Area	Ground Floor GFA	First Floor GFA	Total GFA	Proposed FSR
House 01	237.54sqm	66.3sqm (including stair & 2.3sqm of garage)	77.4sqm	143.7sqm	0.6:1 (10% Variation)
House 02	241.59sqm	66.5sqm (including stair & waste store)	77.1sqm	143.6sqm	0.59:1 (9% Variation)
House 03	196.64sqm	65 sqm (including stair & waste store)	54.4sqm	119.4sqm	0.61:1 (11% Variation)
House 04	196.64sqm	61.9 sqm (including stair & 8.3sqm of garage)	58sqm	119.9sqm	0.61:1 (11% Variation)
House 05	196.64sqm	57 sqm (including stair & 3.5sqm of garage))	59.1sqm	119.6sqm	0.61:1 (11% Variation)

The site is located within 'Area 3' on the FSR map and therefore is subject to Clause 4.4A of the BBLEP2013. The objectives of this Clause are as follows:

- a) *To ensure that the bulk and scale of development is compatible with the character of the locality; and*
- b) *To promote good residential amenity.*

Pursuant to Clause 4.4A(3)(d), the proposal is defined as '*attached dwellings*' and '*semi-detached dwelling*' and not defined as '*dwelling houses*' or '*multi-dwelling*' housing. As such the building type would fall under the category of '*all other development for the purpose of residential accommodation*'. Given the above, the maximum permitted FSR for the subject site is 0.5:1.

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

(2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument...

(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

The Applicant has provided a Clause 4.6 variation statement to justify contravening the FSR standard. Their justification is provided below:

4.6(3) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and there are environmental planning grounds to justify the contravention of the standard

Applicant's Comment:

The authority established by Four2Five Pty Ltd v Ashfield Council (2015), necessitates that environmental planning grounds for the proposed variation must be established aside from the consistency of the development with the objectives of the standard and the objectives of the zone.

In Wehbe V Pittwater Council (2007) NSW LEC 827, Preston CJ set out the following 5 different ways in which an objection (variation) may be well founded:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of points 2-5 above.

Having regard for the authority within Wehbe, compliance with the maximum FSR development standard has been determined to be unreasonable and unnecessary in the circumstances of the case, and the following grounds are submitted on support of the variation.

- The proposal seeks to maintain the rectilinear subdivision pattern that has been established within the locality and is anticipated by the desired future character of the area. The proposed frontage width and dwelling design is characteristic of nearby contemporary developments and is acceptable in the context of the subdivision and streetscape pattern.*

Planner's Comment: The proposed subdivision pattern is not in line with the desired future character of the area as is discussed in Note 2 – Subdivision pattern below.

- *Compliance with the 0.5:1 requirement would result in a significant reduction of floor space, with the proposed allotments only able to accommodate approximately 121m² of gross floor area each. Given a dwelling house would be able to be provided with in excess of 200m² of gross floor area, an FSR of 0.5:1 would not provide an appropriate correlation between the size of the proposed lots and the extent of the development on each lot, when compared with contemporary development in the locality. In this regard, the development would not be consistent with the prevailing character of the area.*
- *Compliance with the development standard would result in a development that is not indicative of the scale and internal amenity of other contemporary developments within the locality.*

Planner's Comment: As stated above, the proposed subdivision pattern is not considered appropriate in the context of the site (refer to Note 2 – Subdivision pattern). The standard is not considered unreasonable or unnecessary in this case as the proposed subdivision pattern (which is not supported) is prompting the need for an FSR variation. As a result, a variance to the FSR is not justified.

- *Given a dwelling house, would generally require a 900mm side setback to both sides, as well as an additional parking space, a dwelling house with equal FSR to the proposal would result in less landscaped area, less private open space, and a shorter rear setback than the proposal. Note that dwelling houses are generally subject to the same numerical controls within the BDDCP 2013 as attached dwellings.*

Planner's Comment: There is potential for a compliant scheme, providing the subdivision pattern complies (which it does not in this case). Therefore it is not justified to support the FSR variation based on the fact that other controls will be impacted.

- *There is merit in applying the FSR which could be achieved for attached dwelling (i.e. a dwelling house) being 0.85:1. The FSR of the proposed attached dwellings of 0.60:1 provides a density and visual appearance which is commensurate with what may be provided for a dwelling house on each lot. Although attached dwellings necessitate the provision of a party wall over the new boundary, the building bulk in this location is offset by additional floor space that might otherwise be provided elsewhere.*

Planner's Comment: The proposed attached dwellings do not provide a density or visual appearance that is desirable in the context of the site as is discussed further in this report.

Thus, although the standard may not have been destroyed, its application under these circumstances is not reasonable.

- *A development could be made to comply with the 0.5:1 FSR at the site. However, it is unlikely that this would result in any changes to the presentation to the street. Two storey developments are predominant within the street, and Council has demonstrated that there is no distinction to be made in the scale of attached dwellings when compared with dwelling houses. Therefore, a development for attached dwellings which complies with the development standard would be expected to result in poorer internal amenity than is typical for the locality.*

Planner's Comment: The proposed subdivision pattern and impacts on the streetscape character as a result of the attached dwelling typology proposed have been assessed in this report and it is deemed that the appearance of the street will be considerably

negatively altered. Therefore, a development that complies with the maximum allowable requirement from FSR should be adhered to.

- *Were Council to insist on compliance with the development standard, attached dwellings would then be the most desirable development typology on smaller lots. Preference should be given to attached dwellings on small lots, given that they provide a more efficient distribution of density at the site, and that they enable smaller site coverage over the site, and a provision of greater private open space and deep soil area. In this sense, the underlying objectives and purposes of the FSR may be defeated or thwarted if compliance was required, as detached dwellings on narrow allotments would be provided with very little functional floor space, with no associated benefit to the bulk and scale or character of the locality.*

Planner's Comment: The proposed lot configuration is not supported by Council, therefore it should not be assumed that attached dwellings would be the most desirable typology on the site. Given the existing streetscape character of Queen Street and the desired future character of the area, attached dwellings would not be considered appropriate from a streetscape and subdivision pattern point of view. Refer to further assessment below.

Clause 4(a)(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

Planner's Comment: It is considered that the argument put forward by the applicant detailing whether there is sufficient environmental planning grounds to justify contravening the development standard is not supported by Council.

Clause 4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone which the development is proposed to be carried out.

Applicant's Comment:

The objectives of the R2 Low Density Residential Zone are as follows:

- *'To provide for the housing needs of the community within a low density residential environment.'*

The proposal seeks to provide additional housing to meet the needs of the local community. Attached dwellings are a low density form of residential development, and the provision of further attached dwellings in the locality is consistent with this objective of the zone.

- *'To enable other land uses that provide facilities or services to meet the day to day needs of residents.'*

This objective relates to the various non-residential uses that are permissible within the zone, and does not strictly apply to the proposed development. However, the increased density proposed by the subject development will improve the viability of non-residential uses within the locality.

- *'To encourage development that promotes walking and cycling.'*

The development provides sufficient space to enable bicycle storage for future occupants, and given the proposal is located within proximity to local services and

public transport options, the increased density associated with the proposed development better meets this objective than the existing dwelling at the site.

The objectives of the R2 Low Density Residential Zone are as follows:

- a) 'to ensure that the bulk and scale of development is compatible with the character of the locality,*
- b) to promote good residential amenity.'*

The objectives to Part 4.4A relate to all development types that are affected by this clause. The table within subclause (3)(a), which applies only to dwelling houses, best demonstrates how each of these two objectives are able to be met concurrently. That is, as the size of an allotment decreases, the floor space required to maintain appropriate residential amenity to a dwelling, must be increased relative to the size of the allotment. Additionally, as the size of an allotment increases, the floor space required to maintain a bulk and scale that is compatible with the character of the locality, must be decreased relative to the size of the allotment.

The maximum FSR for multi dwelling housing as prescribed by subclause (3)(b), and the maximum FSR for residential flat buildings as prescribed by subclause (3)(c), are each greater than the FSR proposed at the site.

Of the ten other development types affected by subclause (3)(d), only six types of development are permitted at the site. Two of these, boarding houses and seniors housing, are provided with FSR bonuses under higher order planning instruments. Secondary dwellings are not permitted by the R2 zoning, but are permitted by way of State Environmental Planning Policy (Affordable Rental Housing) 2009, which also permits a floor space equal to that available for dwelling houses. This leaves only attached dwellings, group homes, and attached dwellings, as being strictly affected by subclause (3)(d).

Attached dwellings are able to meet the objectives of the standard, by being provided with a FSR that is expected by the vast majority of other development types that are affected by the standard.

With specific reference to the objective (b), the design of the proposal has ensured that good residential amenity is maintained as outlined in the following:

- The proposed development will not impact on views that are available from nearby properties, or to or from important landmarks within the locality.*
- The amenity of the adjoining properties is not considered to be negatively impacted as a result of the proposed development. This includes both physical impacts such as overshadowing, overlooking and acoustic privacy as well as visual impacts such as height, bulk and scale, setbacks and landscaping.*
- The physical impacts of the proposed development are considered to be minor with careful design minimising any potential impacts. Diagrams have been prepared. All surrounding dwellings, and private open space areas will be capable of achieving the minimum sunlight access requirements – i.e. 3 hours solar access between 9am and 3pm at the winter solstice. Narrow sections are provided in the centre of each dwelling to improve solar access to adjoining properties.*
- With regards to overlooking, there are considered to be no privacy issues relating to overlooking opportunities to the north, south and east of the subject site. Whilst some potential overlooking opportunities exist as a consequence of the rear balconies, appropriate mitigation measures have been utilised to ensure the privacy and security of neighbours is not impacted. This includes generous rear and side setbacks, the inclusion of ground floor pergolas to obscure views to neighbouring properties, as well*

as sensitive internal dwelling layouts. First floor windows to side boundaries are provided with higher sill heights to minimise visual privacy impacts.

- In terms of the visual impacts, the proposed development is considered to be of an appropriate height, scale and visual appearance so as to be compatible with the surrounding area. Appropriate built form massing has ensured the development appears as a relatively modest building when viewed from the streetscape and the surrounding allotments.*

Planners Comments:

The Clause 4.6 variation to the FSR development standard has been assessed in accordance with the BBLEP2013.

The proposal:

- Is inconsistent with the existing FSR densities surrounding the site and therefore the objectives of *Clause 4.4A Exceptions to floor space ratio for residential accommodation*. The proposal will create a development that has an inappropriate built form. The development will add bulk and scale to the street and will therefore adversely impact upon the consistency and streetscape character of Queen Street;
- Is not considered to meet the objectives of the R2 Low Density Residential zone as it incorporates medium density typologies of attached and semi-detached dwellings that would be more appropriate within a R3 – Medium Density Residential zone.
- Is not considered to be compatible with the Desired Future character of the Botany Precinct.
- Will compromise the solar access, on-street parking, traffic generation, visual privacy, and amenity of surrounding properties given the added bulk and scale of the development (refer to respective sections of this report for further assessment);
- Would not comply with the prevailing subdivision pattern (refer to *Note 2 – Subdivision Pattern*) and will furthermore impact upon the bulk and scale of the development within the street.

Taking into consideration the above, the proposal is not consistent with the objectives of the standards. The applicant has attempted to provide justification for the proposed variation however in this case it is considered that the variation is not appropriate in maintaining and enforcing the development standard. The departure to the FSR development standard is contrary to the public interest, and therefore the Clause 4.6 request is not supported.

Clause 4(b) the concurrence of the Secretary has been obtained

The deviation from the FSR development standard does not raise any matter of significance for State or regional environmental planning and concurrence is not required for the scope of works in this application.

S.4.15(1)(a)(ii) - Provisions of any Draft EPI's

There are no current Draft EPIs applicable to this development

S.4.15(1)(a)(iii) - Provisions of any Development Control Plan

Botany Bay Development Control Plan 2013

5. The development proposal has been assessed against the controls contained in the Botany Bay Development Control Plan 2013 as follows:

Part 3A – Parking & Access

Control	Proposed	Complies
3A.2 Parking Provisions of Specific Uses		
C2 Car parking provision shall be provided in accordance with Table 1. Attached Dwellings: 1 space/dwelling	Each dwelling provides one (1) off street car parking spaces within either a garage or carport.	Y
3A.3 Car Park Design		
C10 Off-street parking facilities are not permitted within the front setbacks.	The off-street parking facilities are located behind the entrance portico of each dwelling.	Y
C12 Off-street parking facilities must not dominate the streetscape and are to be located away from the primary frontages of the site.	The proposed off-street parking facilities will dominate the street considering the width of each lot is 5.86m. The parking facilities would extend over the majority of the lot width, dominating the development's presentation to the street frontage.	No – Refer to Note 2 – Subdivision Pattern
C14 A maximum of one vehicle access point is permitted per property. Council may consider additional vehicle access points for large scale developments.	Following subdivision, each property will have only one (1) vehicle access point off Queen Street.	Y
C16 The following general design principles shall be considered when planning access driveways for developments: (i) Separate ingress and egress vehicle access points shall be arranged for large scale developments to enable vehicular flow in a clockwise direction wherever possible; (ii) Reversing movements into and out of public roads shall be prohibited at all times (except for dwelling houses); (iii) The location of an access driveway shall be sited to minimise the loss of on-street parking; (iv) An access driveway at the property line shall be clear of obstructions, such as fences, walls, poles and trees which may prevent drivers from viewing pedestrians; and (v) The vehicle access point of the property shall be signposted with appropriate signs. (vi) No vehicles shall be allowed to queue in the public road reserve.	The proposed subdivision and driveways will result in a loss of on-street car parking. The driveway accessing House 02 will require the relocation of the power pole at the frontage of the site. The minimum clearance for driveways from existing power poles is 1m.	No
C28 The minimum width of the access driveway at the property boundary shall be:- (i) For dwelling houses: 3 metres	The proposed driveway widths do not comply.	No

Part 3E – Subdivision and Amalgamation

Control	Proposed	Complies
3E.2.1 Residential Torrens Title Subdivision		
C1 Development Applications shall demonstrate that the proposed subdivision or amalgamation is consistent with the Desired Future Character of the area (refer to relevant sections in Part 8 - Character Precincts, Part 9 - Key Sites, Part 5 - Business Centres and Part 6 - Employment Zones).	The proposed lots will not demonstrate a pattern that is consistent with the Desired Future Character of the Botany Area which requires the retention and preservation of the rectilinear grid pattern. The pattern proposed is not rectilinear. Refer to Note 2 – Subdivision Pattern for further discussion.	No – Refer to Note 2 – Subdivision Pattern
C2 Proposed subdivision or amalgamation must have characteristics similar to the prevailing subdivision pattern of lots fronting the same street, in terms of area; dimensions, shape and orientation (refer to Figure 1). Note: Council generally considers the 'prevailing subdivision pattern' to be the typical characteristic of up to ten allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site. Properties located in the surrounding streets do not usually form part of the streetscape character and are therefore not taken into consideration when determining the prevailing subdivision pattern.	The proposed subdivision pattern is not in line with the prevailing subdivision pattern in terms of area, dimensions, or shape. Refer to Note 2 – Subdivision Pattern for further discussion.	No – Refer to Note 2 – Subdivision Pattern
C3 Development application which proposes the creation of new allotments must be accompanied by a conceptual building plan that demonstrates compliance with relevant building controls.	A subdivision concept plan has been provided.	Y
C4 Notwithstanding Control C2 above, land within Area H1 and H2 (refer to Figure 2, Figure 3 and Part 8 - Character Precincts) may have a minimum lot width of 5 metres.	The proposed lot widths are to be 5.86m in width.	Y
C5 Proposed lots must be of a size and have dimensions to enable the siting and construction of a dwelling and ancillary structures that: i) Acknowledge site constraints ii) Address the street iii) Minimize impacts on adjoining properties including access to sunlight, daylight, privacy and views iv) Provide usable private open space v) Protect existing vegetation vi) Mitigate potential flood affectation and stormwater management requirements vii) Acknowledge contamination of the land viii) Protect heritage items	The proposed allotments will create an adverse impact upon solar access and privacy to the adjoining properties.	No – Refer to Note 2 – Subdivision Pattern
C7 All lots created shall have at least one (1) frontage to the street.	All lots will have a frontage to Queen Street.	Y

Note 2 – Prevailing Subdivision Pattern

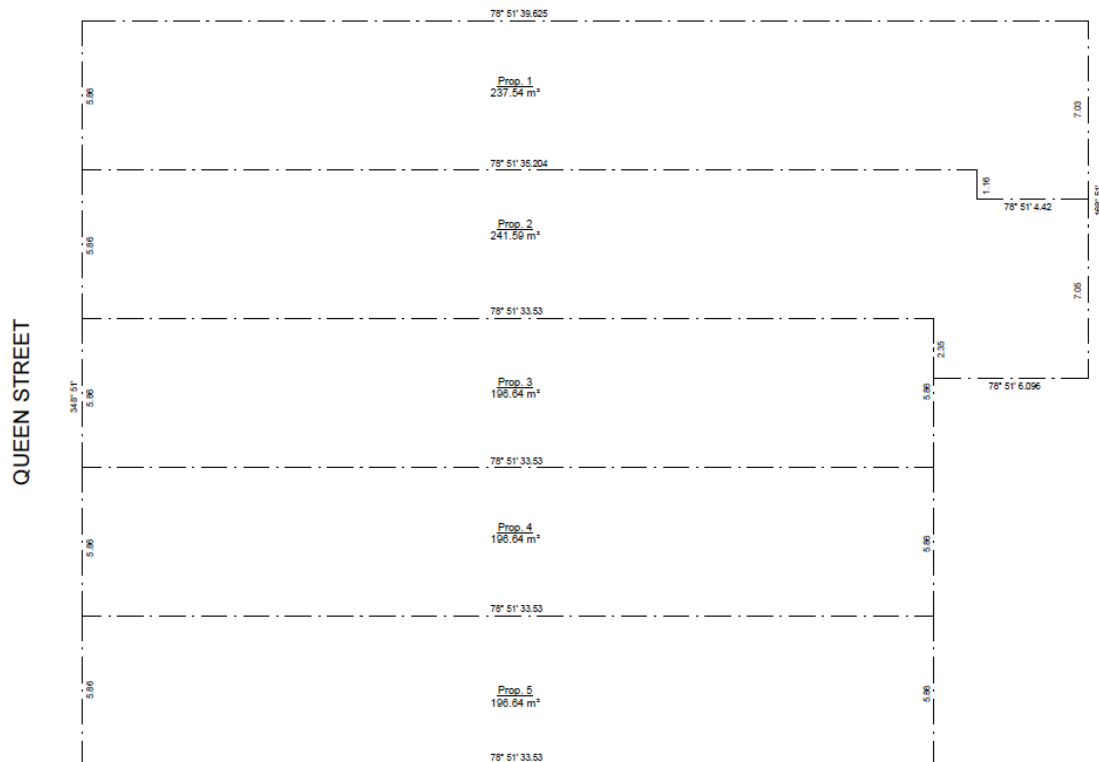


Figure 11: Proposed lot subdivision plan from two (2) lots to five (5) lots

The proposal involves the Torrens title subdivision of the existing lots at 3 Queen Street and 5 Queen Street from two (2) lots to five (5) lots with 5.86m wide lot widths.

The relevant objectives of Part 3E.2.2 – Residential Torrens Title Subdivision of the BBDCP2013 are as follows:

- (1) To ensure that proposed subdivision is consistent with the Desired Future Character of the area;
- (2) To ensure the proposed subdivision is consistent with the existing or prevailing subdivision pattern;
- (3) To ensure a site's characteristics are considered;
- (4) To ensure the orderly development of land does not adversely impact on the amenity of existing developments within the locality; and
- (5) To ensure that future development can be accommodated on the land subject to controls with the DCP (ie. site frontage widths and setbacks).

Objective 1. To ensure that proposed subdivision is consistent with the Desired Future Character of the area;

The Desired Future Character Statement for the Botany Precinct states that development is to 'retain and preserve the rectilinear grid pattern within the Precinct.' The proposed

subdivision pattern will not maintain the rectilinear pattern as Lot 1 and Lot 2 incorporate a battle axe like configuration towards the rear of the allotment (figure 9).

Objective 2. To ensure the proposed subdivision is consistent with the existing or prevailing subdivision pattern;

The DCP states that Council generally considers the prevailing subdivision pattern to be the typical characteristic of up to ten (10) allotments on either side of the subject site and corresponding number of allotments directly opposite the subject site. It is noted that the DCP does not provide any exclusions to how this subdivision pattern should be calculated in terms of zoning, strata subdivided properties or subdivided developments approved prior to the gazettal of the Botany Bay LEP 2013. An assessment of the lot pattern in the vicinity of the subject site has been undertaken. Refer to figures 12 and 13.

The subdivision pattern exhibits a consistent pattern in allotment sizes ranging from 403 sqm to 556 sqm with lot widths ranging from 12m to 15.2m. The average lot size amounts to 433.3 sqm and the average lot width amounts to 12.7m. The subject sites are located on the northern end of the block. The existing lot at 3 Queen Street is longer in depth than the existing lot at 5 Queen Street. The existing lot at 5 Queen Street follows the consistent prevailing pattern of the block.

The subdivision pattern to the south, which is part of the same block as the subject sites is consistently rectilinear. The subdivision pattern opposite the subject sites on the western side of Queen Street is also consistently rectilinear. The same can be said for the blocks further west and south of the subject sites (outside of the 10 allotments assessed), excepting a few exceptional instances.

The proposal will involve the Torrens title subdivision of the existing lots at 3 and 5 Queen Street as follows:

Lot	Lot Site Area	Lot Width	Configuration
Lot 1	237.54sqm	5.86m	Battle-axe/Irregular
Lot 2	241.59sqm	5.86m	Battle-axe/Irregular
Lot 3	196.64sqm	5.86m	Rectilinear
Lot 4	196.64sqm	5.86m	Rectilinear
Lot 5	196.64sqm	5.86m	Rectilinear

Given the above calculations and observations, the proposed lot characteristics are not consistent with the prevailing subdivision pattern and will therefore result in the overdevelopment of the area. The lot areas are too small and the lot widths are too narrow to ensure that the prevailing subdivision pattern is retained. The configuration of Lot 1 and 2 is also inconsistent with the distinct rectangular forms of all adjoining and adjacent lots in the block.



Figure 12: Lot configurations of the prevailing subdivision pattern

Objective 3. To ensure a site's characteristics are considered;

The proposed subdivision does not appropriately consider the site characteristics particularly the east-west orientation of the block, the rectilinear configuration of surrounding lots and the lack of potential to provide an appropriate building envelope and design that will meet all other requirements stipulated in the BBDP2013 as well as apparent on the street.

It is not considered that the proposed subdivision pattern will provide an appropriate building envelope that will respond to the characteristics of the site considering every property along Queen Street consists of a detached dwelling with 0.9m side setbacks (refer to images below). Dwelling building envelopes that incorporate these characteristics would not be appropriate on the proposed subdivided lots as they would limit the useability of the dwelling. The proposed narrow lot widths and small lot sizes (when compared to surrounds) therefore prompt the design of terraced or attached dwelling typologies. These typologies are not consistent with the existing conditions on the street and would detrimentally impact upon the streetscape presentation of Queen Street. Refer to *Part 4A.2.4 – Streetscape Presentation* for further assessment regarding streetscape character.

Taking into consideration the above, support for a terraced typology cannot be justified and the proposed subdivision pattern is not supported.

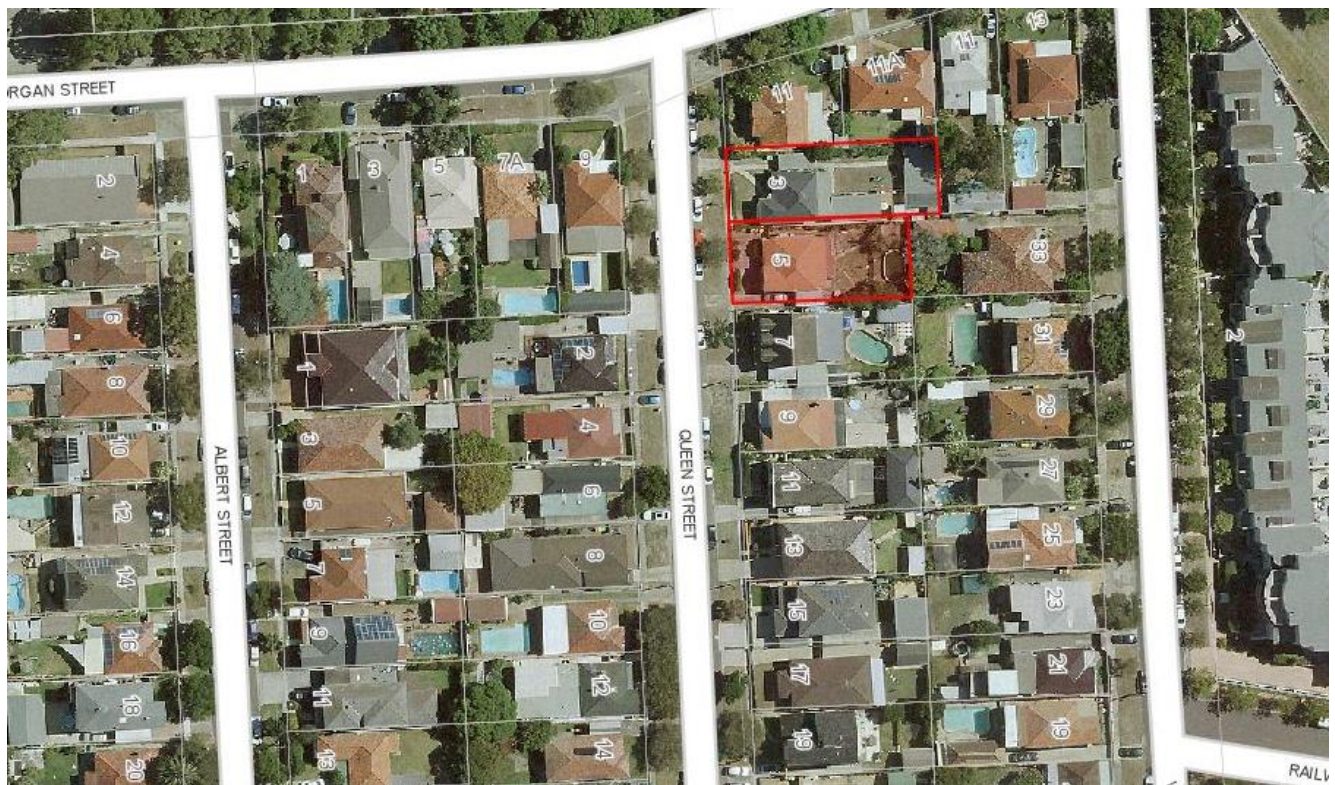


Figure 13: Satellite imagery of lot configurations. Note the existing building typologies



Figure 12: 1, 3, 5, and 7 Queen Street, Botany Streetscape View
Note the existing conditions of the subject sites and their relationship to the surrounding blocks, all with consistent setbacks and lot widths

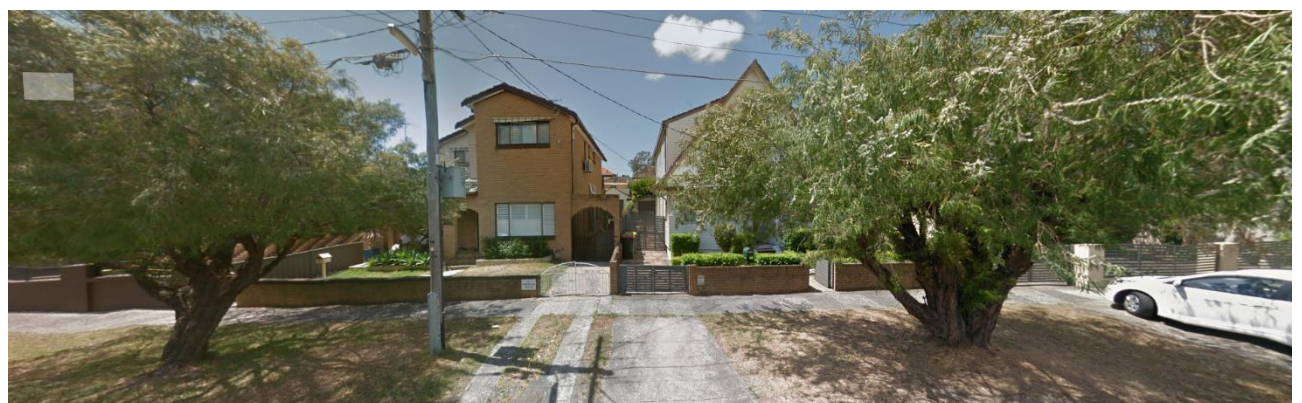
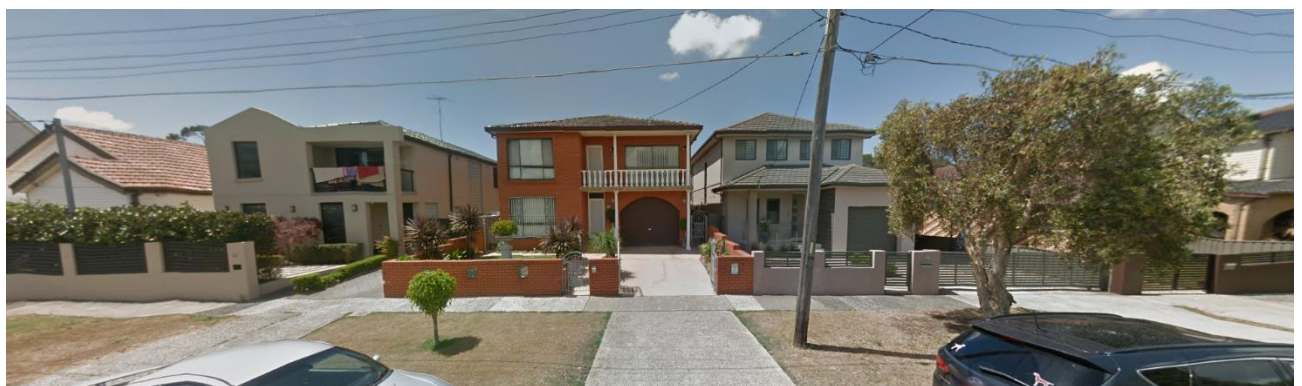


Figure 13: Properties along the eastern side of Queen Street. Note the consistent setbacks and lot widths.



Figure 14: Properties directly opposite the subject site. Note the consistent setbacks and lot widths.

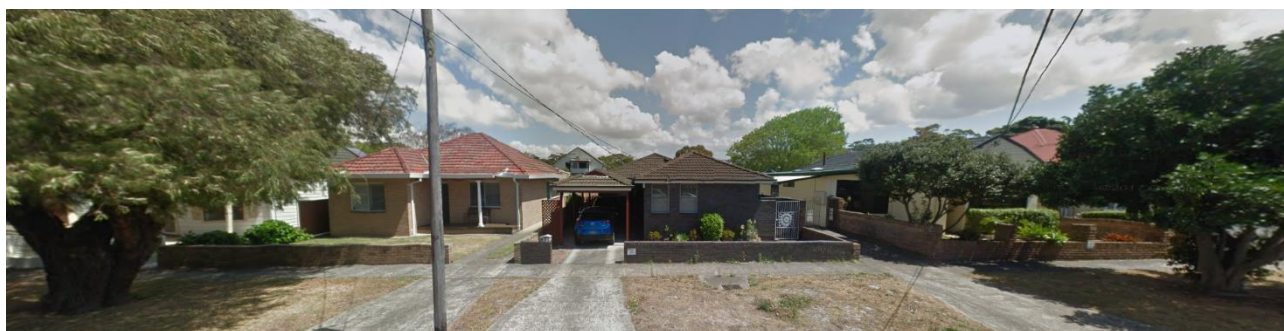


Figure 15: Properties along the western side of Queen Street. Note the consistent setbacks and lot widths.

Given the east-west orientation of the lots, consideration must also be taken into account when assessing the potential for development in terms of solar access for subject and adjacent properties. The proposed building typology is attached and semi-detached dwellings which means that in some cases the building envelope will have a nil boundary setback. While the proposal attempts to alleviate the impacts of overshadowing via indents and courtyards, the minimum amount of solar access will continue to be difficult to achieve for any southern adjoining properties. Refer to *Note 4 – Solar Access* for further assessment regarding requirements relating to overshadowing.

Furthermore, the inconsistency of the proposed subdivision pattern will also impact upon other aspects of the proposal such a vehicular access and its impact upon on-street car parking, bulk and scale, aircraft noise exposure, and visual privacy and amenity (all further assessed in respective sections of this report).

Objective 4. To ensure the orderly development of land does not adversely impact on the amenity of existing developments within the locality;

Refer to the above comments.

Objective 5. To ensure that future development can be accommodated on the land subject to controls with the DCP (ie. site frontage widths and setbacks).

The proposed subdivision pattern will perform as a poor precedent that will have a detrimental impact upon future development in the area as it has minimal regard for the desired future character of the area and the controls stipulated in the BBDCP2013.

The proposed subdivision pattern has been assessed against the controls and objectives of *Part 3E – Subdivision and Amalgamation* of BBDCP2013. As demonstrated, it is not considered that the proposed subdivision pattern meets the objectives of the clause and therefore the proposal is not supported.

Part 3G – Stormwater Management

The development application was accompanied by stormwater plans and absorption rates which were prepared by TAA Consulting Engineers Pty Ltd. The plans demonstrate that an absorption system is to be provided. The stormwater system proposed is not supported a geotechnical report was not provided to justify the infiltration rate used in the design. The infiltration rate propose is greater than the maximum allowable under this clause.

It should also be noted that the site is also located within a groundwater exclusion zone and a geotechnical report is mandatory in considering works proposed below NGL. Furthermore, details regarding the proposed in-ground swimming pool and the provision of rainwater tanks were not provided.

The scheme was referred to Council's Development Engineer who does not support the proposed stormwater management system as insufficient information has been provided to complete an accurate assessment of the proposal.

Part 3J – Aircraft Noise and OLS

The provisions of Australian Standard AS2021-2000 have been considered in the assessment of the development application as the subject site is located within the 20-25 ANEF contour. Residential development in these areas is considered 'conditional' under Table 2.1 of Australian Standard AS2021-2000. The development will result in an increase in the number of dwellings and people affected by aircraft noise. Therefore the submission of an acoustic report demonstrating that the proposed dwellings can achieve the requirements under Table 3.3 of AS2021-2000 is required.

An acoustic report was not provided therefore Council was unable to complete an accurate assessment of the impacts of aircraft noise.

Part 3K – Contamination

The relevant requirements and objectives have been considered in the assessment of the development application. The subject site has long been utilised for residential purposes and it is unlikely that the land is contaminated. Furthermore, the application has been assessed against SEPP 55 and is found to be satisfactory. Further site investigation is not required necessary in this instance.

Part 3L – Landscaping and Tree Management

The proposal was referred to Council's Landscape Officer who does not support the proposed landscape plan as insufficient information has been provided to complete an accurate assessment of the proposal.

The proposed lot is required to provide a minimum of 15% (of the site area) of deep soil landscaping to comply with C2 in Part 4A2.9 of BBDCP2013. The following areas are proposed per lot:

House 01:	62.8 sqm / 26%
House 02:	43 sqm / 18%
House 03:	51.2 sqm / 26%
House 04:	53.9 sqm / 27%
House 05:	58.5 sqm / 30%

The proposed landscaped area complies with the minimum requirements, however there are a number of other issues and concerns that were not addressed. This includes the insufficient information regarding the proposed swimming pool surrounds, and the rainwater tanks to be utilised for irrigation. Therefore, Council is unable to complete an accurate assessment of the proposal.

Part 3N – Waste Minimisation and Management

A Waste Management Plan prepared by Botany Terraces Pty Ltd was submitted with the application listing methods for minimising and managing construction and ongoing waste on site.

Part 4A – Dwelling Houses

Control	Proposed	Complies
4A.2.4 Streetscape Presentation		
<p>C1 New dwellings must be designed to reflect the relevant Desired Future Character Statement in Part 8 - Character Precincts and are to reinforce the architectural features and identity which contributes to its character. Applicants must address the design principles outlined in the statement.</p> <p>C2 Development must be designed to reinforce and maintain the existing character of the streetscape.</p> <p>C3 Development must reflect dominant roof lines and patterns of the existing streetscape (refer to Figure 3).</p>	<p>The proposal is located in a R2 Low Density Residential Zone. The immediate context is relatively low scale, consisting of single and double storey detached residential dwellings.</p> <p>The proposed development is not consistent with the desired future character of Botany. This is further discussed in <i>Part 8 – Botany Character Precinct</i>.</p> <p>The existing character of the streetscape is quite distinct, as the building typologies and subdivision pattern of the block and street incorporate relatively the same characteristics. These include approximately 12m wide frontages, 0.9m side setbacks, gabled or hipped roof forms and detached single dwelling forms.</p> <p>While the proposal reflects the dominant roof lines and patterns along the street, the overall form of the development does not reinforce or maintain the existing character of the streetscape, largely due to the deviation from the distinct prevailing subdivision pattern. The narrow lot widths</p>	<p>No – Refer to Note 2- Subdivision Pattern above and Part 8 – Botany Character Precinct, below</p>

	<p>and smaller site areas (as assessed in Note 2 – Subdivision Pattern) result in a bulk and scale that overdevelops the site. The development presents more as a medium density typology rather than an appropriate low density articulation of form.</p> <p>The proposal will not sit appropriately within a street that is relatively consistent.</p> <p>Refer to <i>Note 2 – Subdivision Pattern</i> and <i>Part 8- Botany Character Precinct</i> for further discussion.</p>	
<p>C4 Buildings must appropriately address the street. Buildings that are intrusive or inconsistent with the established development pattern will not be permitted.</p> <p>C6 The entrance to a dwelling must be readily apparent from the street.</p> <p>C7 Dwelling houses are to have windows to the street from a habitable room to encourage passive surveillance.</p>	<p>The proposed dwellings will all address Queen Street.</p> <p>Their proposed entrances are also readily apparent from the street.</p> <p>Bedroom 1 of each dwelling will have windows facing the street, encouraging passive surveillance.</p>	Y
<p>C10 Development must retain characteristic design features prevalent in houses in the street including: verandas, front gables, window awnings, bay windows, face brickwork or stone details.</p>	<p>Major characteristic design features prevalent in houses in the street include gabled or hipped roofs. The proposal incorporates these roof types in the design.</p>	Y
4A.2.5 Height		
<p>C1 The maximum height of buildings must be in accordance with the Height of Buildings Map and Clause 4.3 of the Botany Bay Local Environmental Plan 2013.</p>	<p>Maximum Height: 8.5m</p> <p>Proposed Height: 8.5m</p> <p>Complies.</p>	Y
4A.2.6 Floor Space Ratio		
<p>C1 The maximum FSR of development must comply with the Floor Space Ratio Map and Clause 4.4 and 4.4A of the Botany Bay Local Environmental Plan 2013 (refer to Figure 12).</p>	<p>Total Proposed FSR Combined: 0.61:1</p> <p>Overall deviation of 11%</p>	No – Refer to Note 1 – FSR Variation
4A.2.7 Site Coverage		
<p>C2 For sites over 200m² the maximum site coverage is:</p> <p>200 – <250m² 65% of the lot</p>	<p>Site coverage areas for each lot listed below:</p> <p><i>House 01: 125.1 sqm / 52.7%</i></p> <p><i>House 02: 121.3 sqm / 50%</i></p> <p><i>House 03: 72 sqm / 36.6%</i></p> <p><i>House 04: 86.9 sqm / 44%</i></p> <p><i>House 05: 86.8 sqm / 44%</i></p> <p>Complies.</p>	Y
4A.2.8 Building Setbacks		

<p>C.1 Dwelling houses must comply with the following minimum setbacks as set out in Table 1.</p> <p><i>Lot Width of less than 12.5m:</i> <i>Minimum front setback</i> – comply with the prevailing street setback or 6 metres (min) <i>Minimum side setback</i> - Up to 2 floors 900mm (Council may require an increased setback due to streetscape and bulk considerations) <i>Minimum rear setbacks</i> – 6 metres (min) <i>Zero lot lines (with Council Discretion)</i> – On merit based on building type and open space provisions <i>Eaves</i> – 450mm minimum setback</p>	<p>Proposed Front Setback: Prevailing street setback. Complies.</p> <p>Proposed Side Setbacks:</p> <p><i>House 01:</i> Northern – 0.9m, Southern – Nil</p> <p><i>House 02:</i> Northern – Nil, Southern – 0.9m</p> <p><i>House 03:</i> Northern – 0.9m, Southern – Nil</p> <p><i>House 04:</i> Northern – Nil, Southern – Nil</p> <p><i>House 05:</i> Northern – Nil, Southern – 0.9m</p> <p>An assessment has been completed of the prevailing building type and pattern along Queen Street. It was deduced that the building typologies along the street are quite distinct in that all dwellings incorporate a 0.9m side boundary setback. The proposed lots front only one street (Queen Street) and access is not available from a rear or secondary street. Therefore, the nil boundary setbacks, particularly to House 04 are considered inappropriate due to concerns relating to amenity, streetscape presentation, construction, and maintenance.</p> <p>For further discussion regarding the side boundaries refer to <i>Note 3 – Boundary Setbacks</i>, below.</p> <p>Rear Setbacks:</p> <p><i>House 01:</i> Nil</p> <p><i>House 02:</i> Nil</p> <p><i>House 03:</i> 10.06m</p> <p><i>House 04:</i> 10.06m</p> <p><i>House 05:</i> 10.06m</p> <p>The rear setbacks of House 01 and House 02 do not comply as the proposed cabanas are located on the boundary posing visual privacy and amenity concerns. Refer to Part 4A.5 – Ancillary Structures.</p>	<p>No – Refer to Note 2 – Subdivision Pattern & Note 3 – Boundary Setbacks</p>
<p>C5 To avoid the appearance of bulky or long walls side and rear setbacks should be stepped or walls articulated by projecting or recessing window elements, or a variation in materials.</p>	<p>The proposal incorporates courtyards and indents to all of the dwellings to ensure that large expanses of blank walls along the side boundaries between neighbouring properties are avoided and the internal amenity of indoor living spaces is achieved.</p>	<p>Y</p>

<p>C9 In certain circumstances where terrace house dwelling forms are proposed, Council may grant consent to a development with a 0 metre setback to a side boundary. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Planning Principle “Building to the side boundary in residential areas” established in <i>Galea v Marrickville Council</i> [2003] NSWLEC 113 (or as updated) and consideration has been given to that statement. The Planning Principle is available to view on the Land and Environment Court’s website (www.lawlink.nsw.gov.au/lec).</p>	<p>Terrace style housing is proposed for House 03, House 04 and House 05.</p> <p>The applicant has not addressed the questions identified in the Land and Environment Court Planning Principle “Building to the side boundary in residential areas” in regards to the boundary to boundary setbacks of House 04.</p>	<p>No – Refer to Note 3 – Building Setbacks</p>
<p>4A.2.9 Landscape Area</p>		
<p>C1 Landscaped areas are to be designed accordance with Part 3L - Landscaping.</p> <p>C2 Development shall comply with the following minimum landscaped area requirements, based on the area of the site in Table 2.</p> <p>Table 2 requires the following minimum landscaped area:</p> <p>Less than 250 m² - 15%</p> <p>Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).</p> <p>C3 Landscaped Area is to be fully permeable deep soil zones which are areas of natural ground or soil, not planter boxes (refer to definition in Part 3L – Landscaping).</p>	<p>Landscaped areas for each lot listed below:</p> <p>House 01: 62.8 sqm / 26%</p> <p>House 02: 43 sqm / 18%</p> <p>House 03: 51.2 sqm / 26%</p> <p>House 04: 53.9 sqm / 27%</p> <p>House 05: 58.5 sqm / 30%</p> <p>The landscaped area proposed is predominantly deep soil area within the internal courtyard and the front and rear setbacks.</p>	<p>Y</p>
<p>C7 Where a building, driveway or pool is sited at the location of an existing tree, Council may require plans to be modified.</p>	<p>The proposed driveways will impact upon the existing trees within the nature strip.</p>	<p>No</p>
<p>C8 The front setback is to be fully landscaped with trees and shrubs and is not to contain paved areas other than driveways and entry paths. Paving is restricted to a maximum of 50% of the front setback area.</p>	<p>Due to the narrow lot width and the 3m provision for the driveway, more than 50% of the front setback will be paved which does not comply with the control.</p>	<p>No</p>
<p>4A.3.1 Materials and Finishes</p>		
<p>C3 Materials, colours, architectural details and finishes must be sympathetic to the surrounding locality.</p> <p>C4 The use of materials with different textures such as brickwork, glass,</p>	<p>A schedule of colours and finishes was provided with the application.</p> <p>The proposal is to incorporate a range of materials including:</p>	<p>Y</p>

<p>timber weatherboards and iron awnings are to be used to break up uniform buildings.</p> <p>C10 The exterior walls of new dwellings must incorporate different materials, colours and textures to add interest and articulate the facade.</p>	<ul style="list-style-type: none"> • External Weatherboards in colours 'natural white' and 'ecru quarter' (neutral palette) • White painted timber fences and balustrades • Colorbond sheet metal roofing in colour 'shale grey' • A range of architectural details in neutral colour palettes <p>The materials, colours, architectural detail and finishes are sympathetic to the surrounding locality, and add interest to the facade. The proposed materials, architectural details and finishes incorporate the use of different textures and colours preventing uniformity and adding interest to the streetscape facade.</p>	
<p>C7 Terracotta roof tiles must be used where this is the predominant roofing material.</p>	<p>The predominant roofing material in the street is terracotta roof tiles.</p> <p>The development proposes Colorbond metal roof sheeting which is not in line with the predominant roofing material on the street.</p>	No
<p>C11 New development must incorporate colour schemes that are consistent with the predominant colour schemes in the street. No expansive use of white, light or primary colours which dominate the streetscape are permitted.</p>	<p>The proposed colour scheme is consistent with the colours apparent in the street incorporating a neutral palette of whites and greys.</p>	Y
4A.3.2 Roofs and Attics/Dormer		
<p>C1 Where roof forms in a street are predominantly pitched, then any proposed roof should provide a similar roof form and pitch. Roof pitches are to be between 22.5 degrees and 40 degrees.</p> <p>C3 A variety of roof forms will be considered, provided that they relate appropriately to the architectural style of the proposed house and respect the scale and character of adjoining dwellings.</p>	<p>There are a variety of roof types along the street. The proposed roof of each dwelling is a combination of hipped and gabled lines. The design attempts to provide roof lines that complement the roof of adjoining dwellings which include hipped and steep gabled designs.</p>	Y
4A.3.3 Fences		
<p>C1 Front fences are to compliment the period or architectural style of the existing dwelling house.</p>	<p>A picket style front fence with a height of 1.2m is proposed for the development. There is no existing consistent front fence style along the street however the proposed fence is considered appropriate in its context.</p>	Y
4A.4.1 Visual Privacy		
<p>C1 The privacy needs of residents should be considered in designing a new dwelling or alterations and additions to a dwelling. Windows are to</p>	<p>The window selection and location is not considered appropriate in preventing direct views from proposed windows towards adjoining properties.</p>	No – Refer to Public Submissions

<p>be located so they do not provide direct or close views into the windows of other dwellings, particularly those of living areas.</p> <p>C2 Visual privacy for adjoining properties must be minimised by:</p> <ul style="list-style-type: none"> ▪ Using windows which are narrow or glazing which is translucent or obscured ▪ Ensuring that windows do not face directly on to windows, balconies or courtyards of adjoining dwellings ▪ Screening opposing windows, balconies and courtyards; and ▪ Increasing sill heights to 1.5 metres above floor level. 	<p>There are a number of windows on House 01 and House 05 which face directly towards 1 Queen Street and 7 Queen Street respectively.</p> <p>In House 01, the ground floor stair window, laundry window, kitchen window and living and dining sliding doors face directly on to windows in the adjacent property at 1 Queen Street.</p> <p>In House 05, the ground floor hallway window faces directly towards two windows in the adjacent property at 7 Queen Street.</p> <p>These windows do not incorporate methods for minimising overlooking impacts, therefore adequate privacy levels between the neighbours and the residents are not maintained.</p>	
<p>C3 First floor balconies are only permitted when adjacent to a bedroom.</p> <p>C4 First floor balconies are only permitted at the rear of the dwelling if wholly located over the ground floor, providing the requirements in C1, C2 and C3 above are met.</p> <p>C6 Balconies are to be designed to minimise overlooking to other properties.</p>	<p>The front facing balconies to all the dwellings are located adjacent to Bedroom 01. The rear facing balconies to House 01 and House 02 are located adjacent to the Master Bedrooms.</p> <p>The front facing balconies will not pose any visual privacy issues as they overlook the street. However, the rear facing balconies are not wholly located over the ground floor (they extend over the outdoor alfresco area) and will pose negative overlooking impacts towards the properties to the rear of the site.</p>	<p>No – Refer to Public Submissions</p>
<p>4A.4.2 Acoustic Privacy</p>		
<p>C4 New dwellings on land within the Australian Noise Exposure Forecast (ANEF) Contour 20 or higher shall be designed and constructed in accordance with Australian Standard AS 2021 (Acoustic Aircraft Noise Intrusion-Building siting and Construction).</p>	<p>The proposed dwelling is within the 20-25 ANEF contour. Refer to <i>Part 3J – Development Affecting Operation at Sydney Airport</i>, above.</p>	<p>No – Refer to Part 3J above</p>
<p>4A.4.3 Solar Access</p>		
<p>C1 Buildings (including alterations/additions/extensions) are to be designed and sited to maintain approximately 2 hours of solar access between 9am and 3pm on 21 June to windows in living areas (family rooms, rumpus, lounge and kitchens) and to 50% of the primary private open space areas of both the subject site and adjoining properties.</p> <p>C3 Where the primary private open space of an adjoining development currently receives less than the required amount of sunlight on 21 June</p>	<p>Shadow diagrams were provided with the subject application. The lots are east-west orientated. The proposal will impact upon the amount of solar access received directly south of each proposed property.</p> <p>Impacts on adjoining properties on 21st June</p> <p><i>1 Queen Street:</i></p> <p>The proposal is unlikely to impact upon this property as it is oriented towards the north.</p> <p><i>7 Queen Street:</i></p>	<p>No – Refer to Note 4 – Solar Access</p>

<p>(50% coverage for a minimum of 2 hours), the proposed development must not further reduce the amount of solar access to the private open space of the adjoining development.</p> <p>C4 Council may grant consent to a development that does not comply with the 2 hours of solar access requirement. However, Council must not grant consent, unless the applicant has satisfactorily addressed the questions identified in the Land and Environment Court Sunlight Planning Principle. The Planning Principle is updated by Court decisions and is available to view on the Land and Environment Court's website (www.lawlink.nsw.gov.au/lec).</p> <p>C5 Where a neighbouring development currently receives less than the required amount of sunlight (on 21 June) the amount of sunlight available on the 21 March or the 21 September will be assessed and form a merit based assessment of the Development Application.</p>	<p>The northern elevation of the dwelling will be overshadowed by the development at all times of the day. Its private open space will receive sunlight to at least 50% of its area only during midday.</p> <p><i>11 Morgan Street:</i></p> <p>The private open space of this property will be overshadowed from midday onwards.</p> <p><i>33 Victoria Street:</i></p> <p>The rear private open space of this property will be overshadowed from midday onwards.</p> <p>The subject properties will also not receive adequate solar access with all northern and southern elevations impacted. Furthermore, the proposed private open spaces will not receive the minimum 2 hours of sunlight to 50% of these areas on 21 June.</p> <p>Refer to <i>Note 4 – Solar Access and Public Submissions</i> for further discussion.</p>	
4A.4.4 Private Open Space		
<p>C1 Each dwelling is to have a private open space that:</p> <ul style="list-style-type: none"> (i) Has at least one area with a minimum area of 36m²; (ii) Is located at ground level with direct access to the internal living areas of the dwelling; (iii) Maximises solar access; (iv) Is visible from a living room door or window of the subject development; (v) Minimises overlooking from adjacent properties; (vi) Is generally level; (vii) Is oriented to provide for optimal year round use; (viii) Is appropriately landscaped; and (ix) Is located or screened to ensure privacy; <p>Note: Private open space is not to include:</p> <ul style="list-style-type: none"> (i) Non-recreational structures (including garages, tool sheds and such like structures); (ii) Swimming pools; and 	<p>Private open space areas for each lot are listed below:</p> <p>House 01: 85.3 sqm House 02: 68.6 sqm House 03: 51.3 sqm House 04: 56.9 sqm House 05: 56.9 sqm</p> <p>The private open spaces are located at ground level with direct access from the living areas. They receive adequate solar access and are appropriately landscaped and screened to ensure privacy.</p>	Y

(iii) Driveways, turning areas and car spaces, drying areas and pathways. C2 Sites less than 250m ² may have a minimum area of 25m ² .		
C5 The primary private open space area is to be located at the rear of the property.	The primary private open space areas of the proposal are located at the rear of the property.	Y
4A.4.6 Excavation		
C1 Buildings must not dominate or detract from the natural landform. The siting of buildings should relate to the site's natural context and topographical features.	The proposed development is located on a site that is relatively flat and will therefore not involve extensive excavation.	Y
4A.4.7 Vehicle Access		
C1 Driveways within a property shall have a minimum width of 3 metres. Note: An additional clearance of 300mm is required (for each side) if the driveway is located adjacent to a solid structure (i.e. masonry wall). C2 The width of the vehicular crossing over the Council's road reserve shall be a minimum of 3 metres for a single garage and a maximum of 5.5 metres for a double garage at the property boundary and at 90° to the kerb. C3 Driveways must be designed to comply with AS2890.1 (also refer to Part 3A - Car Parking).	The current proposed driveway widths do not comply with the DCP and should be a min of 3m wide at the boundary and set at 90 degrees to the kerb. The proposed driveways are not supported by Council's Development Engineers as they are not designed to comply with AS2890.1.	No – Refer to Part 3A
C4 Vehicular crossings shall be sited so that existing street trees, bus stops, bus zones, power lines and other services are not affected.	The proposed vehicular crossing will impact upon the existing power pole.	No
C6 The number of vehicle crossings is to be limited to one (1) per allotment.	Only one (1) vehicle crossing is provided per allotment.	Y
C7 Vehicular crossings shall be sited so as minimise any reduction in on-street kerb side parking.	The proposed vehicular crossings will result in a reduction of on-street kerb side parking. Refer to <i>Part 3A – Car Parking</i> .	No – Refer to Part 3A
4A.4.8 Car Parking		
C1 Development must comply with Part 3A - Car Parking.	Refer to <i>Part 3A – Car Parking</i> .	No – Refer to Part 3A
C4 Car parking structures must be located and designed to: (i) Comply with AS2890.1 and (ii) Conveniently and safely serve all users; (iii) Enable efficient use of car spaces, including adequate manoeuvrability for	Refer to <i>Part 3A – Car Parking</i> and <i>Note 2 – Subdivision Pattern</i> as the proposed car parking scheme will dominate and detract from the streetscape due to the proposed narrow lot widths.	No – Refer to Part 3A & Note 2 – Subdivision Pattern

<p>vehicles between the site and the street;</p> <p>(iv) Not dominate or detract from the appearance of the existing dwelling or new development and the streetscape;</p> <p>(v) Be compatible in scale, form, materials and finishes with the associated dwelling;</p> <p>(vi) Not reduce availability of kerbside parking;</p> <p>(vii) Retain any significant trees; and</p> <p>(viii) Have minimal impact on existing fences and garden areas that contribute to the setting of the associated dwelling and the character of the streetscape.</p>		
<p>C8 In new development the garage/carport is to be setback 5.5 metres from the front boundary. This may be difficult for small allotments with a frontage of 12.5 metres or less. In these cases Council will consider whether or not to require a setback of 5.5 metres on merit – this merit based assessment will include whether or not the proposed garage will have a dominant impact on the streetscape.</p>	<p>The proposed garages are setback less than 5.5m from the front boundary and the proposed allotments are quite narrow at 5.86m wide. However, the subdivision of the existing lots into the narrower allotments is not supported, therefore a deviation from the setback requirement is also not supported.</p>	<p>No</p>
<p>C9 Garages, parking structures (i.e. carports & car spaces) and driveways are not to dominate the street.</p>	<p>The proposed parking structures in combination with the proposed subdivision pattern will negatively dominate the street.</p> <p>Refer to <i>Part 3A – Car Parking & Note 2 – Subdivision Pattern</i></p>	<p>No – Refer to Part 3A and Note 2 – Subdivision Pattern</p>
<p>4A.5 Ancillary Development</p>		
<p>C1 The principal dwelling plus any ancillary structures are to comply with the controls for site coverage, minimum landscaped area, private open space and setback and height controls.</p>	<p>Refer to respective sections.</p>	<p>No</p>
<p>C3 Swimming pools and spas must comply with Part 70 - Swimming Pools.</p>	<p>Refer to <i>Part 70 – Swimming Pools</i>.</p>	<p>No - Refer to Part 70 – Swimming Pools</p>
<p>C4 Outbuildings (not including secondary dwellings) must be set back 900mm from the site's boundaries. Windows and glass doors are to face into the property. High or opaque windows may face onto a neighbouring property.</p> <p>Note: A nil setback may be used for masonry building walls with no eaves, gutters or windows; and for carports and open structures such as pergolas, awnings, and the like. Compliance with</p>	<p>The proposed cabana areas at the rear of House 01 and House 02 have nil boundary setbacks. Compliance with the BCA is required.</p>	<p>No</p>

the Building Code of Australia is required.		
C5 All ancillary structures must comply with the following criteria: a. The structure does not exceed a maximum street wall height (or side wall height if not presenting to a street) of 3.6m; b. The structure does not exceed a maximum roof height of 6 metres; c. The pitch of the roof must not exceed 36 degrees;	Cabana Side Wall Height: 3.1m Cabana Roof Height: 3.6m Cabana Roof Pitch: 17 degrees	Yes

Note 3 – Boundary Setbacks

Part 4A.2.8, Control C9 states that where terrace style developments are proposed, Council may grant consent to a development with a 0 metre setback to a side boundary with the provision that the applicant provides an assessment against the Land and Environment Court Planning Principle “Building to the side boundary in residential areas” established in *Galea v Marrickville Council* [2003] NSWLEC 113. The development incorporates nil side boundary setbacks to at least one side of every house proposed excepting House 04 which proposes boundary to boundary nil side setbacks.

The applicant did not provide an assessment against the Land and Environment Court Planning Principle stated above, therefore there has been insufficient information provided to complete an accurate assessment of the proposal.

Note 4 – Solar Access

Development Control Plan (DCP) 2013 states that the minimum amount of direct solar access to the dwelling's and adjoining dwellings primary open space area shall not be less than 2 hours between 9:00am and 3:00pm on the 21st June. In addition, Clause 6 states that where an existing development currently receives less than the required amount of sunlight (on 21st of June) the amount of sunlight available on the 21st of March or the 21st of September will be used as an alternative standard.

The subject allotment is east-west orientated with west being the front of the property and east being the rear of the property. The residential subdivision pattern in the street is such that each of the allotments exhibit a predominately east-west orientation and in this regard the provision of solar access to adjoining residential buildings directly to the south of each allotment is difficult to achieve.

Nonetheless, the proposal involves the subdivision of the existing two lots into five lots, meaning that the number of people and dwellings impacted by overshadowing will increase. Not only will the adjacent neighbour be impacted by the proposal, but the proposed dwellings will also find difficulty achieving the minimum requirement for sunlight, posing solar amenity and dwelling useability impacts for the internal rooms and spaces proposed.

The applicant has submitted shadow diagrams for 9am, 12pm, and 3pm on June 21 and March 22. The shadow diagrams show that the adjoining windows and private open spaces at 7 Queen Street, will not receive the prescribed amount of sunlight. As the property is situated south of the proposal, 7 Queen Street's northern elevation and private open space, will be impacted during all times of the day. The property will only receive an adequate amount of sunlight to 50% of its private open spaces for a considerably short period of time, during midday. The proposed development further reduces the amount of solar access to the private open space of 7 Queen Street.

The same can be stated for the proposed windows and private open spaces in the subject development which will not receive adequate sunlight excepting a short period of time during midday.

Shadow diagrams provided for the 22 March were also assessed. They illustrate that the northern elevation of 7 Queen Street will continue to be impacted by the proposal during all times of the day. The private open spaces of 7 Queen Street and the proposed dwellings will receive an adequate amount of sunlight to at least 50% from 9am to midday. However based on the assessment below, the proposed development is not considered suitable given the inappropriate siting, design and subdivision pattern of the proposal.

The applicant has not addressed the questions identified in the Land and Environment Court Sunlight Planning Principal. The Land and Environment Court planning principles on the impact on solar access of neighbours (*Parsonage v Ku-ring-gai* (2004) NSWLEC 347) and as amended by *The Benevolent Society v Waverly Council* has therefore been addressed by Council as follows:

The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed). At higher densities sunlight is harder to protect and the claim to retain it is not as strong.

Comment: The subdivision pattern along the eastern side return of Queen Street is orientated east-west, with west being the front boundary and south being the rear boundary. The proposed development is within a low density residential area and does not comply with subdivision controls. The southern property (7 Queen Street) will be considerably impacted by the development as the existing conditions will not be retained. Furthermore, the addition of 3 more dwellings on the subject site will increase the density in the area and therefore further impact upon the amount of sunlight that each proposed dwelling receives.

The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.

Comment: The amount of existing sunlight comparative to the amount of sunlight retained has been taken into account. The shadow diagrams submitted with the application indicated in plan, that the development would overshadow the adjoining property to the south and the subject proposed dwellings during all times of the day. It is considered that the overshadowing impacts created by the proposed development are not within acceptable limits and the application should not be supported.

Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.

Comment: The proposal's design is not supported. As discussed above, the proposed subdivision of the lots is considered inappropriate and will contribute to negatively impacting upon the amount of sunlight that should be provided.

For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest proportions of the glazed area.

Comment: All northern and southern proposed windows of the development as well as northern facing windows at 7 Queen Street, will be completely overshadowed on June 21 for a period of more than 2 hours.

Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.

Comment: Overshadowing by fences, roof overhangs and changes in level have been taken into consideration. The sites will continue to be affected by the design regardless of the fences and roof overhangs of the proposal.

In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as existing development.

Comment: The area is low density residential, consisting of predominately one and two storey dwellings. While it can be expected that with change dwellings on the street may increase from one to two storeys, the proposed subdivision of the existing sites will result in an increase of dwellings which will be further impacted by overshadowing.

70 – Swimming Pools

Control	Proposed	Complies
70.2 General Requirements		
C1 Development must comply with the maximum site coverage requirements of the relevant Parts of the DCP. Note: Swimming pools are included within 'site coverage' calculations and are not included as 'landscaped area'.	House 02 has a site coverage of 121.3sqm/50% of the site area which complies with the maximum requirement.	Y
C4 A Geotechnical report is required where the site is located in a groundwater exclusion zone.	The site is located within a groundwater exclusion zone however a geotechnical report was not provided.	No
C7 Swimming pools and spa pools are to be located at the rear of properties and not within the front setback.	The proposed swimming pool is located within the rear yard of House 02.	Y
C8 The following minimum setbacks are required for swimming pools and spas (refer to Figure 1): (i) 1m from side boundaries;	The proposed swimming pool incorporates a minimum side boundary setback of 1m.	Y

<p>(ii) In cases where a proposed pool adjoins a habitable room of a neighbouring dwelling, a setback greater than 1.5 metres may be required by Council in order to protect the amenity of residents; and</p> <p>(iii) Setbacks are required to accommodate existing trees including their root systems, as well as trees on adjoining properties.</p>		
C13 Direct sightlines into neighbouring residential properties must be reduced.	Direct sightlines into the neighbouring residential property are unlikely.	Y
C14 All swimming pool safety fences and requirements for spas must comply with the relevant Acts, Regulations and Australian Standards.	Pool fence details were not provided.	No – Insufficient information
C15 Swimming pools are to be orientated to the northern aspect of the site to maintain a sufficient level of solar access or incorporate energy efficient heating systems if the swimming pool is to be heated (e.g. solar heating systems connected to the roof of the dwelling)	The proposed swimming pool will receive an adequate amount of northerly solar access.	Y
C21 A rainwater tank must be installed to ensure that the pool / spa can be filled up without the need to rely on potable water supplies. The tank capacity must comply with Table 1.	Rainwater tank provisions have not been specified.	No – Insufficient information

Part 8- Botany Character Precinct

The site is located within the R2 Low Density Residential Zone of the Botany Precinct on the eastern side of Queen between Morgan Street to the north and Hambly Street to the south. Refer to the table below which addresses each point regarding the 'Desired Future Character' for Botany.

Control	Proposed	Complies
<p>Function and Diversity</p> <ul style="list-style-type: none"> Enhance the public domain and streetscapes within the Precinct. Development should: <ul style="list-style-type: none"> promote neighbourhood amenity and enhance pedestrian comfort; encourage site layout and building styles and designs that promote commonality and a visual 	<p>The proposed development will not enhance the streetscape of Queen Street as the subdivision pattern proposed is inconsistent with the surrounding layout. The proposal will lack a positive relationships with dwellings along the street as it does not complement the existing development patterns, posing</p>	<p>No – Refer to Note 1 – FSR Variation & Note 2 – Subdivision Pattern</p>

<ul style="list-style-type: none"> relationship with the surrounding built form and dwelling styles; encourage dwelling styles that maintain and complement existing development patterns; encourage a strong landscape and vegetation theme within both the public and private domain; 	<p>issues with subdivision, setbacks and inappropriate density.</p>	
<p>Form, Massing, Scale and Streetscape</p> <ul style="list-style-type: none"> Encourage development to follow the topography of the land. Maintain and enhance low density residential accommodation in the form of detached/attached dwellings with a maximum height of 2 storeys in the remainder of the Precinct. Promote site access and parking facilities that do not dominate the streetscape. Encourage new development or alterations and additions to existing development to complement the height and architectural style found in the immediate vicinity, particularly where there is an established character. Maintain roof forms to reflect the characteristics of the prevailing designs within the street. 	<p>Queen Street has quite an established character in that the subdivision pattern and lot widths of each site is relatively the consistent. Each dwelling along the street is also consistent incorporating 0.9m side setbacks.</p> <p>The proposal does not contribute to the streetscape or complement the existing character of the dwellings in the immediate vicinity of the development, largely due to the inconsistency of the propose subdivision pattern.</p> <p>While the development respects the topography of the land and maintains the predominant roof forms in the street, the subdivision and subsequent increase in density on the site is considered inappropriate in the context of Queen Street.</p>	<p>No – Refer to Note 2 – Subdivision Pattern</p>
<p>Setbacks</p> <ul style="list-style-type: none"> Retain front setbacks which are consistent within a street and promote landscaping to soften the built form. Retain side setbacks, where they are consistent within a street 	<p>The front setbacks are consistent within the street.</p> <p>The proposed side setbacks will not be consistent with the existing side setbacks of buildings along the street (0.9m).</p>	<p>No – Refer to Part 4A.2.8 Building Setbacks</p>
<p>Landscaping</p> <ul style="list-style-type: none"> Encourage landscaping within the front and side setback to soften the built form particularly in high density terrace, unit and residential flat buildings. Promote landscaping in rear private open space areas to provide privacy to adjoining properties. Maintain street trees. 	<p>Landscaping has been proposed within the front, side rear setbacks.</p> <p>The existing street trees are to be maintained.</p>	<p>Yes</p>

As such the proposal is unsuitable for the site and inconsistent with the desired future character of the Botany Precinct pursuant to Botany Bay Development Control Plan, Part 8 – Character Precincts.

Subdivision <ul style="list-style-type: none"> Retain and preserve the rectilinear grid pattern within the Precinct 	The proposed subdivision pattern does not comply. The rectilinear grid pattern will not be retained or persevered for proposed lots with House 01 and House 02.	No – Refer to Note 2 – Subdivision Pattern
Solar Access <ul style="list-style-type: none"> Encourage buildings to maximise solar access to surrounding residential properties and to public and private open spaces. Preserve solar access to adjoining properties. 	The proposed development will not maximise solar access to surrounding residential properties. Solar access will be reduced to the adjoining southern property at 7 Queen Street.	No – Refer to Note 4 – Solar Access
Traffic and Access <ul style="list-style-type: none"> Encourage new development to have a minimal impact on traffic flow and demand for on street parking spaces. Encourage development to provide adequate on-site parking to assist in reducing traffic congestion on local road networks. 	The proposal's driveways will result in a decrease in on street parking spaces.	No – Refer to Part 3A – Car Parking

S.4.15(1)(a)(iv) - Provisions of regulations

The proposed development is inconsistent with the relevant provisions of the *Environmental Planning and Assessment Regulation 2000*.

S.4.15(1)(b) - Likely Impacts of Development

As outlined in the assessment above, the proposed development will have significant adverse environmental, social or economic impacts in the locality.

S.4.15(1)(c) - Suitability of the site

The site is located within a 20-25 ANEF contour and is affected by aircraft noise. An acoustic report was not provided despite the development resulting in an increase in the number of dwellings and people affected by aircraft noise therefore preventing an accurate assessment of the proposal.

The subject site is also located within the groundwater exclusion zone, however a geotechnical report was not provided.

Accordingly, it is considered that the site is not suitable to accommodate the development as insufficient information has been provided to enable an accurate assessment of the proposal.

S.4.15(1)(d) - Public Submissions

In accordance with Part 2 of the Botany Bay Development Control Plan 2013 – Notification and Advertising the development application was notified to surrounding property owners for a 14 day period from 20 September 2018 to 5 October 2018. Seven (7) submissions were received and the specific concerns that were raised, are addressed below and within the relevant sections of this report:

- **Car Parking**

Submitter's Comments: The submissions raised concerns regarding the loss and demand of on street car parking considering the development will result in an increase of density from two lots to five. Objectors are also concerned that construction vehicles will further add to difficulties with parking on the street.

Planner's Comment: The loss of on-street parking has been addressed in *Part 3A – Car Parking* of this report. Council agrees that loss of on street parking will become an issue as a result of the additional proposed driveways.

The use of the street for construction vehicles accessing the site is temporary in nature and if an application is considered for approval, Council would impose an appropriate condition, requiring hours of construction that will cause minimal nuisance.

- **Building Design**

Submitter's Comments: The submissions raised concerns regarding the quality of the proposed dwellings.

Planner's Comment: Council cannot comment on the material and finished quality of the proposed dwellings as they have not been yet constructed. However, Council assesses development to ensure that the materials, colours and finishes chosen complement the streetscape and provide an appropriate aesthetic appearance as assessed in *Part 4A.2.4 Streetscape Presentation* and *Part 4A.3.1 Materials and Finishes*.

- **Solar Access**

Submitter's Comments: Concerns were raised that there would be a significant loss of sunlight to the northern side of 7 Queen Street.

Planner's Comment: The solar impacts upon all adjoining properties have been addressed in *Part 4A.4.3 Solar Access* and *Note 4 – Solar Access*. It was deduced that the northern elevation of the property at 7 Queen Street will in fact be adversely impacted by the proposal.

- **Visual Privacy**

Submitter's Comments: Concern was raised regarding the lack of visual privacy due to overlooking from the balconies proposed at the rear of House 01 and House 02 towards 11 Morgan Street. Poor window alignment from the proposed windows along the southern elevation of House 05 towards the windows on the northern elevation of 7 Queen Street were also raised as a concern.

Planner's Comment: The impacts of visual privacy have been addressed in *Part 4A.4.1 Visual Privacy*. The proposed balconies and windows of concern do not propose privacy overlooking mitigation strategies and therefore, are not supported by Council.

- **Fencing**

Submitter's Comments: Concerns were raised regarding the removal of the rear fence between the subject site and 11 Morgan Street.

Planner's Comment: In the case of approval, an appropriate condition is included in the consent to ensure that approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act unless depicted in the stamped plans.

- ***Asbestos and Hazardous Material***

Submitter's Comments: Concerns were raised regarding the removal of potential asbestos and lead painted materials during demolition.

Planners Comment: In the case of approval, a standard conditions is imposed to ensure the safe removal of any hazardous material such as asbestos that may be found during the construction process.

- ***Subdivision Pattern & Streetscape Presentation***

Submitter's Comments: A number of the submissions raised concerns regarding the proposed subdivision pattern, highlighting that the proposal will subsequently impact upon parking, overcrowding, and streetscape consistency issues. The objectors are concerned that the terraced building typology will not complement a street of predominately 'freestanding houses'.

Planners Comment: The subdivision pattern and subsequent impact on streetscape presentation is not supported by Council, as is assessed in *Note 2 – Subdivision Pattern* and *Part 4A.2.4 Streetscape Presentation*.

The proposed issues raised within the submissions have been summarised in the relevant sections in the report above. Council agrees with the submissions received and recommends refusal based on the concerns raised.

S.4.15(1)(e) - Public interest

It is considered that granting approval to the proposed development will have significant adverse impact on the public interest.

Section 7.11 Contributions

The proposed development would generate Section 7.11 Contributions however as the proposal is recommended for refusal, the contributions have not been calculated.

Conclusion

6. Development Application No. 2018/1169 was lodged on 14 September 2018 seeking consent for the demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of two (2) semi-detached dwellings, three (3) attached dwellings, swimming pool and two (2) cabanas at 3-5 Queen Street, Botany.

7.

8. The proposal has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act*. The non-compliances as listed above relating to the BBLEP 2013 and the BBDCP 2013 have not been addressed and it is considered that the proposed development is not suitable for this site. The applicant seeks greater density and unsuitable

subdivision pattern for the site which will result in an inappropriate bulk and scale that does not integrate into the streetscape character that is desired for the area. Furthermore, parking and vehicular access issues as well as overshadowing, stormwater, aircraft noise, and visual privacy pose as quite significant concerns as a result of this development.

9.

10. The development application has been the subject of seven (7) submissions which raised concerns relating to subdivision pattern, streetscape presentation, parking, visual privacy, and overshadowing. The issues raised as part of this application have been addressed throughout the report. Therefore the proposed development is recommended for refusal subject to the reasons of refusal in the attached schedule.

Our Ref: Ana Trifunovska/hh: DA-18/1169



Botany Terraces Pty Ltd
39 Parramatta Road
LIDCOMBE NSW 2141

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION
ISSUED UNDER THE ENVIRONMENTAL PLANNING AND
ASSESSMENT ACT 1979 -SECTION 4.16
NOTICE OF REFUSAL

<u>DEVELOPMENT APPLICATION NO.</u>	2018/1169
Applicant Name:	Botany Terraces Pty Ltd
Date of Application:	14 September 2018
Land to be Developed - Address:	3-5 Queen Street, Botany Lot B & C in DP 150047
Development:	Demolition of existing structures, Torrens Title subdivision into five (5) lots, construction of two (2) semi-detached dwellings, three (3) attached dwellings, swimming pool and two (2) cabanas

DETERMINATION BY BAYSIDE PLANNING PANEL

Made on:	9 April 2019
Determination:	Application formally refused on account of the reasons listed in the attached schedule.

RIGHT OF APPEAL

If you are dissatisfied with this decision, Section 8.9 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this Notice.

Eastgardens Customer Service Centre
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Telephone Interpreter Services - 131 450

Τηλεφωνικές Υπηρεσίες Διασύνδεσης

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REVIEW OF DETERMINATION

In accordance with Section 8.2 of the Environmental Planning and Assessment Act 1979, the applicant may within six (6) months after the date on which notice of determination was received, request the Council to Review its determination in respect of the application. (NB Section 8.2 is not applicable to Integrated, Designated development or, Development determined by the Joint Regional Planning Panel)

SIGNED

On behalf of the Consent Authority

Yours faithfully

A handwritten signature in black ink, appearing to read 'L. Melim', followed by a long horizontal flourish.

LUIS MELIM
MANAGER, DEVELOPMENT SERVICES

Premises: 3-5 Queen Street, Botany

DA No: 18/1169

REASONS FOR REFUSAL

- a) Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development is excessive in terms of bulk, scale, size, density, inconsistent with local character and subdivision pattern and would adversely impact upon the amenity of the locality.
- b) The proposed development, pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, results in an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
- c) Pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposed development does not satisfy Clause 4.4A of the Botany Bay Local Environmental Plan 2013 relating to non-compliance with the floor space ratio development standard of 0.5:1. Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) of the Botany Bay Local Environmental Plan 2013 in regards to floor space ratio.
- d) Pursuant to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not meet the following sections of the Botany Bay Development Control Plan 2013 with respect to the following:
 - i) Part 3A – Car Parking and Access. The proposed development does not comply with the requirements of Part 3A.3.1 C28 and Part 4A.7 C2 relating to compliant vehicular access and loss of on-street parking;
 - ii) Part 3E – Subdivision & Amalgamation. The proposed development does not comply with the requirements of Part 3E.2.2 regarding consistency with the prevailing subdivision pattern in the street;
 - iii) Part 3G – Stormwater Management. The proposed development does not comply with Part 10 – Stormwater Management Technical Guidelines 5.2 (i) & (ii) and does not provide sufficient detail as to the on-site detention system proposed on the site;
 - iv) Part 3J – Aircraft Noise and OLS. The proposed development does not comply as an acoustic report was not provided with the development application, preventing an accurate assessment or aircraft noise impacts;
 - v) Part 3L – Landscaping and Tree Management. The proposed development does not comply as insufficient information was provided regarding the swimming pool and rainwater tanks to be utilized for irrigation, and the proposed driveways will impact upon the existing street trees within the nature strip.
 - vi) Part 4A.2.8 - Building Setbacks. The proposed development does not comply with the minimum side setback requirements imposed in control 1 and 9, and is inconsistent with the dominant pattern along the street.

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- vii) Part 4A.4.1 – Visual Privacy. The proposed development does not comply with control 1, 2, 3, 4, and 5, as it will pose overlooking impacts upon the adjoining properties.
- viii) Part 4A.3 – Solar Access. The proposed development does not comply with control 1 regarding to the minimum sunlight required for proposed and adjoining properties.
- ix) Part 7O – Swimming Pools. The proposed development does not comply with Part 7O.2.4, Part 7O.2.13, and Part 7O.2.21 as insufficient information was provided relating to pool fence details and rainwater tank provisions.
- x) Part 8 – Character Precincts. The proposed development does not comply as it is inconsistent with the desired future character of the Botany Precinct.
- e) Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory as it fails to demonstrate acceptable disposal of stormwater from the subject land.
- f) Pursuant to the provisions of Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided by the applicant to allow a proper and thorough assessment of the impacts of the proposed development and the suitability of the site for the development.
- g) Having regard to the issues raised in submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the proposal results in unacceptable subdivision pattern, visual privacy, solar amenity, excessive density, and car parking impacts on adjoining /nearby properties.
- h) Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest as it is likely to set an undesirable precedent, and is inconsistent with the existing and desired future character of the locality resulting in an overdevelopment of the site, creating a medium density environment in a low density context.

Certified by Luis Melim
Manager, Development Services



